

Explaining the Human Rights Strategy of Transnational Corporations

- A Social Constructivist Perspective

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Acronyms

| | |
|---------------|---------------------------------------------------------|
| AGM | Annual General Meeting (Shell) |
| AIUK | Amnesty International United Kingdom |
| ATCA | Alien Tort Claims Act |
| CMD | Committee of Managing Directors (Shell) |
| ECCR | Ecumenical Council for Corporate Responsibility |
| ECOSOC | Economic and Social Council (UN) |
| FDI | Foreign Direct Investment |
| HRCA | Human Rights Compliance Assessment Tool (Shell) |
| HSE | Health Safety and Environment (Shell) |
| ICC | International Chamber of Commerce |
| ILO | International Labour Organization |
| INGO | International Non-Governmental Organization |
| IOE | International Organization for Employers |
| KPI | Key Performance Indicator (Shell) |
| MOSOP | Movement for the Survival of the Ogoni People |
| NGO | Non-Governmental Organization |
| OECD | Organization for Economic Co-operation and Development |
| PIRC | Pensions Investment Research Consultants Ltd |
| SPDC | Shell Petroleum Development Corporation (Shell Nigeria) |
| TNC | Transnational Corporation |
| UDHR | Universal Declaration of Human Rights (UN) |
| UN | United Nations |

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1. Introduction

1.1 Introduction and Theme

“The role of business in society is the 21st century’s most important and contentious public policy issue.” (Zadek 2001: 1)

To put the relevance of human rights to business into perspective, a good place to start is with the purpose of companies – namely profit. The goal of corporations is to create material wealth including financial income and assets for the company, and this is the core measure of success applied to many businesses, notably publicly listed corporations (Zadek 2001: 110). In their pursuit of profit, the geographical variations in access to raw materials, markets and production possibilities have led some large corporations to develop operations in multiple countries and turn into transnational corporations (TNCs) (Cox 1972: 7).

During the last decades of the 20th century there has been a massive increase in the amount and relative importance of border crossing economic interlinkages. TNCs, “whose organizational structures transcend politics and connect various national societies” have been playing a leading role in this process, and the TNC system is a more extensive and powerful part of the world economy than ever before (Herkenrath & Bornshier 2003: 105). Today, 51 of the 100 largest economies are corporations, there has been a 12-fold increase in world trade since 1945, dominated by a small number of powerful global corporations – hence, the decisions and actions of TNCs are affecting an ever increasing number of countries and populations, and today operate under the gaze of interest organizations, the media, governments, national and international organizations and institutions, and the individual (Zadek 2001: 5; Le Monde diplomatique 2000.12.08).

As the TNC has become an omnipresent and influential global actor – potentially affecting a large number of people world-wide – its impact on human rights through

their direct actions and their influence on the public policy process has become a growing concern and a much debated issue during the last decade or so. It has been noted that considering the positive and negative social and environmental developments in the last century, “The most confusing facts of all concern the contested contributions of business, particularly the corporate community” (Zadek 2001: 5). TNCs are sought after by governments of North and South for the investment, skills, technology and access to markets that they can bring (Chandler 2000:5). One view is that since TNCs and their affiliates provide all of these badly needed resources, such as fresh capital, new ideas and technologies and modern values, they may help developing countries to achieve faster development and “catch up in the world system”. A more pessimistic view however, sees foreign investment as a direct source of abuse in the developing world. In this view, TNCs enter foreign markets to do profitable business without paying any attention to the needs of the majority of the host country’s population (Herkenrath & Bornshier 2003: 108-109). Adding to this concern has been the perception of an inadequate regulation of TNC operations through international law (Sullivan 2003: 305).

Though international law and international institutions have continued to place the responsibility for promoting and protecting human rights on states, this thesis shows that the perceived responsibilities of companies today stretch well beyond making profits. Since the beginning of the 90s, the perceived regulatory vacuum regarding human rights and TNCs has been countered by a growing expectation from human rights organizations and society in general that corporations should consider human rights in their operations, an expectation acted upon by an increasing number of companies. The question that remains given the context portrayed here then, is *why* does this happen, and *how*? Contemporary research tends to focus on descriptive accounts of the relationship between TNCs and human rights issues, and to focus on the evolution and applicability of national and international human rights law to TNCs. Other contributions tend to concentrate on the normative and ethical issues of why TNCs should regard human rights in their operations.

There is, however, a lack of research focusing on these *explanatory* ‘why’ and ‘how’ questions concerning the relationship between TNCs and human rights. Furthermore, if such explanations are attempted, they often lack a clear theoretical foundation and are rely on ad hoc rationalizations of TNC strategy. To describe and explain the changes evidenced in TNC human rights approach, there is therefore a need for analyses with a clear theoretical approach and foundation, capable of accounting for these changes and their presumed causalities. This thesis argues that the new expectations placed on TNCs regarding human rights have led some companies to become more sensitive to human rights in their operations, and that the influence of a corporate human rights responsibility norm can be explained through the application of a social constructivist framework. This will be exemplified by looking at the Royal Dutch/Shell Company, a company which as a consequence of massive pressure spurred by incidents in connection with its Nigerian operations in the mid-1990s, ended up re-thinking its approach to the human rights issue.

1.2 Question of Analysis and Basic Definitions

Thus, the purpose of this thesis is not to make considerations as to how the presence of TNCs affects human rights conditions in countries with poor human rights records, or whether companies *should* engage in human rights issues, but to identify the factors and describe the process that might lead corporations to consider human rights in their operations. Thus, the core question of this thesis is:

Why do some transnational corporations incorporate human rights into their business strategy?

If companies were seen as entities irrelevant to the realm of human rights this would be an unessential area to investigate. As has been argued, and as will be shown, this is not the case. TNCs by definition operate in several countries, and they affect those countries, their policies, and local communities as well as the people internal to the company. A TNC can be defined as an *economic entity or a cluster of economic entities comprising parent enterprises and their affiliates, operating in two or more*

*countries*¹ (Sullivan 2003: 303, footnote 2). A more elaborate definition is employed by the United Nations Sub-Commission on the Promotion and Protection of Human Rights (hereinafter the Sub-Commission). In its work on the proposed *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (hereinafter the UN Norms) designed to hold TNCs accountable for human rights, the Sub-Commission defines the TNC as:

“an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries - whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively.” (UN Norms 2003, Paragraph I.20).

Thus, the essential trait identifying a TNC is not its ownership structure or legal form as such, but namely its *transnational* feature as a consequence of operating in more than one country.

What I am interested in investigating, is the nature of, and explanations for, the way TNCs approach the human rights issues – i.e. the *human rights strategy* pursued by TNCs. As both “good” and “bad” practices by companies may be considered strategies, a specification and definition of ‘human rights strategy’ is needed. I will here adhere to the identification of three ideal-type strategies companies may have when addressing human rights, proposed by Tangen, Rudsar & Bergesen (2000: 186):

- *A reactive strategy* means that the company considers human rights issues irrelevant for business and does not actively integrate human rights concerns into its strategy. If a crisis arises, it is considered a public relations issue.
- *A cautious strategy* means that the company is careful not to neglect human rights, but does not actively work to improve the human rights record in the

¹ Throughout this thesis, the term TNC will be used interchangeably with terms such as ‘transnationals’, ‘corporations’, ‘companies’, ‘business’, ‘multinational enterprises’ (MNEs) and ‘multinationals’, reflecting this definition unless otherwise specified. For further discussion on the concept of TNCs, see for instance Muchlinski 1995: 12-15.

countries it operates. The strategy is to assess the risks connected, adapt rhetorically and be prepared for trouble in particular countries. The company will take care to comply with political regulations from host or home governments, but will not go beyond such standards.

- *A proactive strategy* means that the company sees human rights as an important issue providing new business opportunities. It develops new and superior management systems and organizational forms to take a leading position. The company considers human rights an integral part of its business strategy, not as something imposed on them by government intervention or outside pressures. The concern is more to provide new solutions than with avoiding new regulations which is typical of the other two strategies.

Thus, to answer why some TNCs incorporate human rights into their business strategy, it means answering why some TNCs pursue a *proactive* human rights strategy.

1.3 Basic Approach and Assumptions

To explain why corporations incorporate human rights into their business strategy, and which standards they adhere to, a sub-question that needs to be answered is:

How does this happen?

To answer this, my basic approach in this thesis is twofold. *Firstly*, I develop an analytical framework which may explain TNC human rights strategy in chapter 3. *Secondly*, I apply and test this framework on a practical analytical level in the case of a specific company in the chapter 4. Under the current absence of a comprehensive and mandatory legal framework, I am interested in exploring the factors and processes that lead some TNCs to develop sensitivity to human rights issues. Without the presence of regulation, or the notion that TNCs are legitimate bearers of human rights responsibilities, the obvious assumption would be that a TNCs are inclined to pursue a *reactive* human rights strategy if other strategies entail additional costs for

the company. This may represent a *nil-hypothesis* of this thesis. However, as a number of TNCs have incorporated human rights into their strategies, the task here is to provide an explanation, or several explanations, as to why this is the case. This means identifying the factors and incentives which would lead a company to change strategy. In this thesis, I argue that the *values of society* determine the pressures put on TNCs to improve their human rights approach (see Chandler 2000: 9). I further argue that the human rights standard or benchmark for TNCs is initially set by norm-promoting actors, predominantly human rights non-governmental organizations (NGOs) and international NGOs (INGOs)² and international organizations such as the United Nations (UN).

Examining why TNCs incorporate human rights into their business strategy means examining why some TNCs come to move from a *reactive* or *cautious* strategy to a *proactive* human rights strategy. This will be explained through the application of a social constructivist theoretical framework, and by considering perspectives on what influences TNC human rights strategy to construct an operational framework for analysis. I argue that the norm promoting agents form part of the ‘socializing’ environment corporations operate in, and that this environment and the operational features of a company, determine the expectations tied to companies and the extent of pressure put on them to foster policy change. These expectations and pressures influence companies through different processes of socialization. The workings of these mechanisms can again be described more systematically through the “Spiral Model”. This model is developed to explain how norm violating states relate to human rights and move through different phases, from ‘denial’ via ‘concessions to ‘prescriptive status’ and ‘rule-consistent behaviour’ (Risse & Sikkink 1999). Thus, by applying this model when analyzing Shell, I will also test the degree to which TNC human rights strategy can be explained through the Spiral Model.

² NGOs – non-governmental organizations – are here defined as those “groupings of individuals and associations, formal and informal that belong neither to government nor to the profit-making private sector” (Sullivan 2003: 304, footnote 3), and INGOs – international NGOs – as NGOs operating in two or more countries.

1.3.1 Applying Theory and Model on TNCs

Socialization theories in international relations are mainly used to explain and analyze socialization and internalization of human rights on a state level. The model which will be the main tool of analysis in this thesis, the Spiral Model, which presents stages and mechanisms through which international human rights norms can lead to changes in state behaviour (Risse & Sikkink 1999: 2), is no exception. TNCs are not states – universal and compulsory jurisdiction within territorial boundaries, monopoly of coercive power and promotion of welfare and justice (Barry 2002: 65; Raphael 1990: 43-55) are not traits normally associated with corporations. While it can be claimed that the strict public/private divide in international is somewhat outdated, these differences with regard to public functions and purposes can not be overlooked, and to equate TNCs with states in terms of the legal human rights obligations that can and should be placed on them is simplistic (Kinley & Joseph 2002: 10). Applying the theory and model on TNCs thus needs some justification.

Firstly, following the argument of Osterberg & Ajami (1971), the negligence of the political dimensions of transnationals follow from a bias of political science to study only governments and their institutions. This is a result of the fact that much of the political activity of the transnational takes place through the institutions of the nation-state, and that “the...corporation, unlike governments, is not organized to be responsible to large constituencies or accountable to a general good. Rather it operates to maximize the interests of and extremely restricted good (profits and growth) and is usually accountable a small constituency (the board of directors, and in times of crisis, the stockholders)” (ibid: 457). However, looking at TNCs and their purpose in chapter 2, I argue that this perspective on TNCs is changing, and that the possible stakeholders to which a company is responsible may be thought to encompass a rather far-reaching part of society. Moreover, Osterberg & Ajami (ibid: 459-460) also point out that:

“Corporations...possess many of the attributes of sovereign states. They have large resources at their disposal, they command the loyalty of large numbers of employees to whom corporate identity is often more important than national identity, they have their own spheres of influence as a result of the division of world markets among themselves, and they engage in diplomacy and espionage...activities which have traditionally been viewed as the exclusive domain of governments.”

Secondly, a crucial question is how corporations *are seen* by the actors promoting the norm, international institutions and the society at large. As I will show, corporations are targets for human rights socialization because they are seen as fully or partly responsible for human rights violations and as legitimate bearers of human rights values. The perceived power and impact of corporations and the difficulty of corporate regulation through national and international law has led human rights actors to challenge the notion of corporations as purely economic, neutral entities, and to place new expectations on them. As Skogly (1999: 239) asserts, “The effects on the individual remain the same whether it is a government agent that is responsible for atrocities, or whether it is a private actor”.

In a socialization context it is precisely the *transnational* feature of the TNC which makes it interesting. National corporations are subject to domestic regulation, and their human rights practice is thus more or less a product of national legislation and enforcement, making governments the natural targets for pressure and the operations of the corporations less profiled. TNCs on the other hand operate in an international system in which their legal status is unclear and regulation is weak, and unlike governments they can not be legally compelled to support human rights beyond complying with host-country laws (see Lawrence 2002:4). As a 1996 report of the UN Secretary General regarding TNCs and the realization of economic social and cultural rights states:

“Of importance is... the fact that even though each TNC subsidiary is, in principle, subject to its host country’s regulations, the TNC as a whole is not fully accountable to any single country. The same is true for responsibilities they fail to assume for activities of their subsidiaries and affiliates. The global reach of TNCs is not matched by a coherent global system of accountability” (ECOSOC 1996, paragraph 72).

Thirdly, the eclectic and pragmatic nature, and inherently wide scope concerning level of analysis in international socialization theory – including elements from fields such as institutional sociology and social psychology – might justify its pragmatic application to the realm of corporations. Based on theory originated from and applied on studies on individual policy makers as well as organizations and states (see Checkel forthcoming: 5), I expect that a successful translation of the Spiral Model to business entities is likely, provided that attention is paid to the distinguishing features of TNCs. Applying this framework on companies might prove fruitful for a number of reasons. As I will demonstrate, the link between pressure and consequences might be considered more straight-forward and tangible in the case of corporations than with states. Companies might be sensitive and responsive to bad publicity because companies' interests are strongly connected with reputation, being a vital element of their economic performance. On the other hand, norm-violating governments ruling without the base of popular legitimacy have few incentives to change their human rights approach. In addition, human rights organizations may be more likely to share a cultural affinity (see Lawrence 2002: 9) with TNCs – who are predominantly based in western liberal democracies (UNCTAD 2004) – than with repressive regimes, making mutual respect, dialogue and change more likely and feasible.

Finally, a point needing to be addressed is that though this thesis is not a discussion at the level of theory, the criticisms the Spiral Model has been subject to should be taken note of. Critically assessing the Spiral Model, Checkel points out that causal primacy is given to movement pressure, leaving “decision makers as passive reactants...instead of active agenda setters in their own right” (Checkel 2000: 1339). Furthermore, Checkel argues that the focus on strategic reaction to social pressure, and socialization as struggle and contestation overshadows the possibility of socialization as social learning in the absence of mobilization. This thesis will to a certain degree be informed by the same bias, assuming that corporations are not the primary movers when addressing the issue of human rights. As Chandler (2000: 9) argues:

“History had shown – from the abolition of the slave trade onwards – that companies followed rather than led in response to the changing values of society. The issue of human rights proved no different and was not easily to be put on the business agenda.”

This does not mean that social learning can not take place absent all movement pressure, but that this is more likely to happen when human rights has gained significant acceptance in the TNC community (see chapters 2 and 3). Moreover, by focusing on human rights as a TNC *strategy*, the agency of companies is at all times kept in mind.

1.4 Organization

In chapter 2 I will present the social constructivist framework and the theoretical propositions about the relationship between human rights and TNCs which will serve as the tools of analysis when considering the human rights strategy of Shell.

Chapter 3 brings together the propositions of the theory chapter to construct an analytical framework through which the human rights strategy of TNCs can be explained. This framework comprises contextual factors and company traits, and identifies indicators against which to assess TNC human rights strategy through the development of a ‘corporate Spiral Model’. I then consider some methodological issues which are pertinent when this framework is applied to a specific company.

Chapter 4 presents the case of Shell. I first identify the relevant operational features of Shell, and analyze the company’s human rights strategy as a socialization process. Throughout the chapter I continuously assess how each phase has moved relative to the predictions of the operational framework. I also make a holistic assessment of the case – from its theoretical foundation through an assessment of the ‘fit’ between the theoretical propositions and the findings of the analysis, to the implications of the findings in a wider perspective.

Chapter 5 presents the main propositions and findings of this thesis.

2. Theoretical Perspectives

2.1 Introduction

The main theoretical influence informing this thesis is the social constructivist school in international relations. This chapter gives an overview of the main propositions of this relatively young school of thoughts, and presents some of its most influential theories on how norms are generated and how they gain influence and acceptance. This includes identifying how norms are formed by ‘norm entrepreneurs’, how ‘transnational advocacy networks’ work to promote a norm, identifying how established and accepted a norm is through a norm ‘life cycle’, and explaining the mechanisms through which actors are inducted into these norms. These main elements come together in Risse & Sikkink’s (1999) Spiral Model. This model will be at the core of my operationalization of the socialization of human rights responsibilities in TNCs, when the framework for analysis is developed in chapter 3.

Having presented this social constructivist theoretical framework, I will then look at some of the propositions made in contemporary research about the relationship between TNCs and human rights. This includes identifying the stakeholders which may influence TNC policy and establishing the main traits of the political, social and economic context TNCs operate in today. Further, the perceived degree of TNC responsibility for, and connection with human rights abuses as a consequence of their operations will be considered. Then I will discuss how the agents perceived as the foremost promoters of TNC human rights responsibility – the NGO community – work to influence TNCs, and how a company’s reputational concerns makes it vulnerable to pressure. Finally, I will present some theoretical assumptions about how the culture and style of TNC management influences the group-wide policy orientation of a TNC.

2.2 Social Constructivist Theories in International Relations

While neo-utilitarian principles – explaining ideational factors as strictly instrumental in the search of material interests, including efficiency concerns – are used to explain actions within neo-realism and neo-liberalism dominant in the 1980s, social constructivists see the building blocks of international reality as being ideational as well as material. They are concerned with how *ideas* and *communicative processes* define which material factors are perceived as relevant, and also how they influence understandings of interests, preferences and political decisions. (Risse & Sikkink 1998: 6-7; Ruggie 1998: 855, 878-879; Mearsheimer 1995: 37-42). Realists for their part have focused on ‘structure’, that is anarchy and the distribution of power, when considering influences on state action (see Wendt 1992: 391), while liberalists have focused on intergovernmentalism and the domestic sources of state preferences (Moravcsik 1997: 516-521).

Whereas rational choice theorists (at most) ascribe a secondary and instrumental function to norms and emphasise the material interests, choice and utility maximizing of states, social constructivists see norms and rationality as intimately interconnected forces and emphasise the role of non-governmental actors in affecting domestic and international policy outcomes (Risse & Wiener 1999; Finnemore & Sikkink 1998; Eriksen & Weigård 1997: 223-227). Social constructivism is not a substantive theory of international relations *per se*, but offers an ontology alternative to rational choice for explaining actions and constructing theories (Risse & Wiener 1999: 778). As Finnemore & Sikkink (1998: 888-889) argue:

“the tendency to oppose norms against rationality or rational choice is not helpful in explaining many of the most politically salient processes we see in empirical research – processes we call “strategic social construction”, in which actors strategize rationally to reconfigure preferences, identities or social context.”

2.2.1 Norms and the Normative Space

The definition of a norm generally agreed on is “a standard of appropriate behaviour for actors with a given identity” (Finnemore & Sikkink 1998: 891).³ The practices and rules constituting appropriate behaviour do not float freely. They are made understandable to actors through “structures of meaning and schemes of interpretation that explain and legitimize particular identities and the practices and rules associated with them”, and norm compliance is achieved by connecting practices and rules to “resources and the principles for their allocation that make it possible for individuals to enact roles in an appropriate way and for a collectivity to socialize individuals and sanction those who wander from proper behaviour” (March & Olsen 1998: 948).

It is the standards of ‘appropriate’ and ‘proper’ behaviour that make norms different from other kinds of rules. They imply that norms are intersubjective and evaluative. What is appropriate is decided by reference to the judgements of a community or society. Norm-breaking behaviour generates disapproval or stigma, and appropriate behaviour praise or – when norms are highly internalized and taken for granted – indifference (Finnemore & Sikkink 1998: 891-892).

Different norms (consistent or conflicting) and their composition make up society’s *discourses*, understood here as the “common sense of a culture and the taken-for-granted aspects of social life” (Livesey 2001: 4). Different actors compete to change society’s discourses to fit their interests, resulting in “discursive struggles” (ibid). Put in other words:

“...new norms never enter a normative vacuum, but instead emerge in a highly contested normative space where they must compete with other norms and perceptions of interests.” (Finnemore & Sikkink 1998: 897, underline added)

³ For further reading on the concept of norms, see Finnemore & Sikkink 1998; and Sikkink 1998.

These contradictions both facilitate and reflect social and institutional change (Livesey 2001: 4). In a parallel fashion, some theorists also argue that discursive structuration and social change take place around pre-existing ‘signifiers’, such as ‘democracy’, which are given new meaning when they are structured around structuring signifiers or ‘nodal points’, such as ‘communism’ or ‘liberalism’. Alternatively, actors compete to hegemonize the filling of so-called ‘empty signifiers’, which represent a norm that is missing in a given area or situation, for instance order in a state of anarchy (Howarth & Stavrakakis 2000: 8-9).

While rational choice explains how transfers of information may change actor strategies, it does not leave open the possibility for the endogenization of changes in underlying preferences. Social constructivism on the other hand tries to explain how actors seek to change the preferences of others by restructuring their relative view on certain normative issues compared to others, making these subjective ideas intersubjective norms. (Finnemore & Sikkink: 914-915). Thus, the identities and interests of actors are socially constructed through interaction and are not seen as exogenously given.

However, seeing identities and interests as socially constructed, does not mean they are inherently volatile: ideas, identities and interests are created and reproduced through interaction over time, becoming intersubjective constructions (Wendt 1992: 406; Ruggie 1998: 875). Once constructed, any social system confronts each of its members as an objective social fact that reinforces certain behaviours and discourages others. As actors might be interested in maintaining stable role identities, these “intersubjective understandings” and expectations may become self-perpetuating (Wendt 1992: 411; see also Howarth & Stavrakakis 2000:7).

Social constructivists view the idea of states as ‘sovereigns’ is one such construction, practiced by states to justify and recognize their exclusive political authority within territorial limits (Wendt 1992: 412-413). While states are still considered to be the primary actors in the international system, much of the recent theorizing in international relations that build on social constructivism, seek to build a model that

acknowledges the role of non-state actors that may have transnational identities and overlapping loyalties (Sikkink 1998: 520). The most institutionalized forms of transnational relations are INGOs and TNCs (Risse-Kappen 1995:10).⁴

2.2.2 Norm Entrepreneurs and Transnational Advocacy Networks

As has been argued, the origins of many international norms are not found in pre-existing state interests. As Sikkink (1998: 518) argues they can be found in “strongly held principled ideas (ideas about right and wrong) and the desire to convert others to these ideas” (Sikkink 1998:518). These norms are built by “norm entrepreneurs”, agents who have strong notions about appropriate or desirable behaviour in their community (Finnemore & Sikkink 1998: 896). Norm entrepreneurs call attention to issues, or even create issues by reinterpreting and renaming them, thus creating norms and larger contexts of social meaning – a process referred to as *framing* (ibid: 897).

Norm promoters at the national and international level need organizational platforms they can promote their norms from and through. These organizations can be constructed specifically for promoting the norm, as are most NGOs. Furthermore, these promoters create “transnational advocacy networks” when they believe this will further their cause. A transnational advocacy network is a network of activists working internationally on an issue, composed of international NGOs (INGOs) and foundations which are loosely connected to officials working for international organizations and regimes as well as national governments. These networks multiply the channels of access to the international system using expertise and information to change the behaviour of others, and they also make resources available to actors in domestic political and social struggles (Keck & Sikkink 1998: 1-14).

These advocacy networks serve three purposes, which constitute necessary conditions for sustainable domestic change in the human rights area: 1, they put norm-violating

⁴ For a discussion of transnational relations, see Risse-Kappen 1995: 7-13.

states on the international agenda in terms of moral consciousness-raising. In doing so, they also remind liberal states of their own identity as promoters of human rights; 2, they empower and legitimate the claims of domestic opposition groups against norm-violating governments, and they partially protect the physical integrity of such groups from government repression. Thus, they are crucial in mobilizing domestic opposition, social movements, and NGOs in target countries, and 3, they challenge norm-violating governments by creating a transnational structure of international and domestic NGOs and social movements pressuring such regimes simultaneously “from above” and “from below”. The more these pressures can be sustained, the fewer options are available to political rulers to continue repression (Risse & Sikkink 1999: 18).

The link between domestic groups and the international level can be illustrated through what Keck & Sikkink (1998: 1-14) call the “boomerang pattern”, a characteristic pattern of influence of transnational networks. It occurs when the channels between domestic NGOs (pressuring from “below”) and the state are blocked and the NGOs then bypass their state and directly search out international allies to try to bring pressure on their states from outside (“above”). National opposition groups, NGOs, and social movements bypass the state and link up with transnational networks and INGOs who then convince international human rights organizations, donor institutions, and/or great powers to pressure norm-violating states. Networks provide access, leverage, and information (and often money) to struggling domestic groups. International contacts can amplify the demands of domestic groups, open space for new issues, and then echo these demands back into the domestic arena.

Studies on social movements show that their success in promoting a norm has been greater when they appeal to direct humanitarian concerns than when they deal with complex, multifaceted problems. Keck & Sikkink (1998: 27) identify two specific issue characteristics that are conducive to effective issue organization: 1, issues involving bodily harm to vulnerable individuals, especially when there is a short and

clear causal chain (or story) assigning responsibility; and 2, issues involving legal equality of opportunity.

2.2.3 World Time and the Norm Life Cycle

Understanding the premises for norm influence also means understanding the environment or context – “World Time” – in which these processes take place. Normative change at the international level takes place within a *social structure* of international institutions which regulate human rights norms, and it is conditioned by the existence of transnational advocacy networks. The social structure and transnational networks, and thus the conditions for the change and spread of norms, are constantly undergoing change. Institutions and networks together with historical events such as the end of the cold war and September 11th may change the view on which issues and norms are considered important. Furthermore globalization⁵ entailing an accelerated speed of communication, spread of technology and increasing global interdependence condition the work of norm promoters and how norms are diffused, and the expansion of international organization provide stages for addressing and negotiating normative issues (Finnemore & Sikkink 1998: 909; Risse & Sikkink 1999:19-21). As such, World Time may be seen as a *cross section* of how far a norm has reached in gaining acceptance, how developed and powerful international institutions and advocacy networks are, and how this is influenced by global events and developments, at any given time.

The socialization of actors, and which mechanisms are at play, also depends on to what degree a certain norm has gained acceptance among the group of actors which norm promoters seek to influence. As illustrated by Finnemore & Sikkink (1998: 895-905), norm influence may be understood as a three-stage process consisting of a “norm emergence” stage, a “norm cascade” stage, and a stage of internalization,

⁵ Globalization can be seen as a “process of economic integration, a consequence of which is the possible move away from the state as the exclusive focus of analysis in international affairs (Sullivan 2003: 303, footnote 1).

shown in Figure 2.1. The first two stages are divided by a tipping point, at which a critical mass of states adopt the norm.

| | | |
|----------------|----------------------|-----------------|
| Norm emergence | "Norm cascade" | Internalization |
| Stage 1 | <i>Tipping point</i> | Stage 2 |
| | | Stage 3 |

Figure 2.1. Norm life cycle.

Source: Finnemore & Sikkink 1998: 896.

In stage 1, *norm emergence* occurs when the norm entrepreneurs and their organizational platforms use persuasion to call attention to or create new issues that compete with other norms within established discourses or normative spaces. When the norm entrepreneurs have persuaded a *critical mass* of states to become norm leaders, the norm reaches a *tipping point*. A tipping point can be said to occur when about one-third of states in the system, and critical states without which the achievement of the substantive goal is compromised, adopt the norm. A critical state then is a state whose actions have significant implications in the area that norm entrepreneurs seek to influence, or states that have considerable international stature as norm leaders in other areas or in the form of international leverage. Up to the tipping point little normative change occurs without significant domestic movements supporting such change.

At stage 2, the norm "*cascades*" through the rest of the population of states. More countries begin to adopt new norms more rapidly even without domestic pressure for such change. An effect of demonstration and imitation occurs in which international and transnational norm influences become more important than domestic politics for effecting norm change. Here, norm breakers are socialized to become norm followers through praise or disapproval by norm leaders. Transnational advocacy networks and international organizations act as agents of socialization by pressuring targeted actors to adopt new policies and ratify treaties and by monitoring compliance with international standards. States comply with norms in stage 2 because they fear exclusion from the group of states – and the norms associated with them – that they

like to be identified with, and non-compliance would result in loss of legitimacy, reputation and self-esteem.

At stage 3, norms may have become so widely accepted that they are *internalized* by actors. They achieve a “taken-for-granted” quality that makes conformance with the norm almost automatic, and the norms are no longer a matter of broad public debate.

2.2.4 Socialization Mechanisms and Internalization

The process of norms internalization can be explained by identifying the socializing forces leading actors to change their behaviour and possibly their identities. Social constructivist socialization theories in international relations build on institutional sociology and the symbolic interactionism of social psychology.⁶ Socialization can be defined as “a process of inducting actors into the norms, rules and ways of behaviour of a given community”, where the “outcome is sustained compliance based on the internalization of these new norms” (Checkel forthcoming: 5). Through socialization “principled ideas held by individuals become norms in the sense of collective understandings about appropriate behaviour which then leads to changes in identities, interests, and behaviour” (Risse & Sikkink 1999: 11).

Social constructivists identify three modes of rationality that underlie socialization dynamics: instrumental, bounded and communicative. These can be operationalized into different (not mutually exclusive) types of socialization mechanisms or processes that may lead to internalization (Checkel 2003: 3; Risse & Sikkink 1999: 5):

1: *Strategic calculations/adaptation and strategic bargaining* builds on rationalist social theory and emphasizes social and material incentives. Here, socialization works through instrumentally rational agents who seek to maximize their interests by

⁶ Symbolic interactionism, originating from social psychology, involves a *communication process* whereby an actor ‘A’ interprets the actions – mediated through *symbols* such as culture and values – of actor ‘B’, and responds to these interpreted and context contingent stimuli by altering his behaviour. These mechanisms of symbolic interactionism are employed in international relations by social constructivists (Balzacq 2002: 469-473).

adapting their behaviour and rhetoric to domestic and international pressures. Actors pursue exogenously defined and primarily instrumental or material interests and change their behaviour and rhetoric in order to reach their goals, without necessarily believing in the validity of the norms. Ascribing a given, individualistic, unbounded nature to agents, this mechanism alone cannot account for socialization, internalization and changes in their basic properties (Checkel 2003: 7-9; Checkel forthcoming: 12; Risse & Sikkink: 12)

2: *Normative suasion/moral consciousness-raising* as a mechanism adds a communicative understanding of rationality to the mechanism above. A distinction is made between communicative action as information exchange entailing instrumental adjustment to norms as described above, where the norm and the situation itself is not the controversy, and *argumentative discourses* in the Habermasian sense. Here, agents present arguments and try to persuade and convince each other, and their interests and preferences are open for possible redefinition (Checkel 2003: 11-12). It is the “process by which agent action becomes social structure, ideas become norms, and the subjective becomes the intersubjective” (Finnemore & Sikkink 1998: 914). Actors might accept the validity and significance of norms in their discursive practices, but argue over the course of events or definition of the situation, or engage in “moral discourses” which challenges the validity claims of the norm itself and includes arguments related to identity. Thus, the fixed preferences, definitions of the situation and collective identities of actors are challenged. (Checkel 2003: 11-12; forthcoming: 17; Risse & Sikkink 1999: 13-16).

3: *Role playing/institutionalization and habitualization* based on organization theory and social psychology stresses the bounded rationality of actors, and sees the changed behaviour of agents as a product of prolonged contact and communication with other actors and participation in and exposure to the organizational environment surrounding the agent. Here, actors comply with norms irrespective of individual beliefs about their validity, leading to internalization. Norms are incorporated in the standard operating procedures of domestic institutions, and norm compliance

implementation is depersonalized. This structural mechanism is inherently deterministic, but explaining socialization through this mechanism often hints to learning, arguing and persuasion (Checkel 2003: 9-11; Risse & Sikkink 1999: 16-17). Institutionalization refers to the “emergence of institutions [norms KH] and individual behaviours within them. The process involves the development of practices and rules in the context of using them.” (March & Olsen 1998: 948).

Studies on socialization indicate that on the national level, *domestic structures* and *societal openness* defining society’s culture towards accommodating external influence, might affect the socialization process and determine which mechanisms are most likely to be dominant. Factors influencing socialization include for instance domestic acceptance/opposition of norms, if secessionist groups and internal conflicts are used as excuses to increase domestic legitimacy for norm-violation, and if external threats such as terrorism increase international legitimacy for norm-violation. Thus, these domestic features are partly product of international and transnational features (Risse & Ropp 1999: 264).

More specifically, *behavioural adaptation* to norms is more likely under conditions where the target views the expected rewards to be greater than the costs of compliance (Checkel forthcoming: 13-14). *Persuading* actors to change behaviour is more likely with low domestic opposition, when the agent is in a novel and uncertain environment, the agent has few prior beliefs inconsistent with the new norm, the socializing agent is an authority of the in-group to which the target wants to belong, persuasion is based on arguments instead of demands or lectures, and the socialization occurs in a setting that is not politicized (Checkel 2003: 12; Risse & Ropp 1999: 260-263). Finally, socialization through *role playing* is likely when agents are in settings where contact with socializing agents is long and sustained, and the contact is intense and extensive (Checkel forthcoming: 15). Research indicates that what starts as strategic incentives-based interaction, often leads at later points to preference shifts through persuasion or role playing (ibid: 20; see also Risse & Sikkink 1999).

Since strategic calculation alone does not change the identity of an agent, the internalization of a norm implies that an agent switches from a “logic of consequences” – where actors act as utility-maximizers with exogenously given and hierarchically ordered preferences and conform to norms if the expected consequences are consistent with personal or collective objectives – to a “logic of appropriateness”, incorporating the role of identities, rules and institutions in shaping human behaviour. Here, actors do not follow rules to achieve certain gains, but because they identify with the role and values to which the rules are attached (March & Olsen 1998: 949-953). As suggested above there are two ways an agent may internalize a norm and follow a logic of appropriateness. The agent may behave appropriately by *learning* a role irrespective of whether the agent agrees with it. This means that the agent knows what is socially accepted and adopts a norm consistent role through conscious role playing (referred to as Type I internalization/socialization). The second alternative is that the agent follows a logic of appropriateness as a consequence of accepting the norm as “the right thing to do” and takes it for granted (referred to as Type II internalization/socialization) (Checkel forthcoming: 5-6).

2.2.5 The Spiral Model

Building on the theoretical framework of socialization presented above, Risse & Sikkink operationalize its elements into a “a causal model which attempts to explain the variation in the extent to which national governments move along the path toward improvement of human rights conditions” (Risse & Sikkink 1999:18) – the Spiral Model. The departure point of this model to assess whether the principles laid down in the Universal Declaration of Human Rights (UDHR) have had any effect at all on the actual behaviour of states towards their citizens, and under which conditions international human rights norms are internalized in domestic practices.

The existence and strength of human rights institutions, norms and transnational advocacy networks changes significantly over time, and thus the cases on which the

model is applied take place in different moments in World Time. A ‘tipping point’ is identified around 1985, with a following ‘norms cascade’ regarding states and human rights. Country cases that begin before the norms cascade will take longer to move through the phases than cases of repression that begin after the norms cascade has taken place. If the international human rights cascade is sustained, states are less likely to engage in a lengthy ‘denial’ stage, since human rights norms become increasingly accepted. The Spiral Model consists of several ‘boomerang throws’ with diverging effects on the human rights situation in the target country (ibid: 17-22).

The model also builds on the three types of socialization mechanisms identified above – processes of adaptation and strategic bargaining, moral consciousness-raising, and institutionalization and habitualization – the last of which is seen as necessary for enduring change in the human rights area. The significance of each process varies with different stages of the socialization process, but a rough order is suggested, depicted in Figure 2.2.

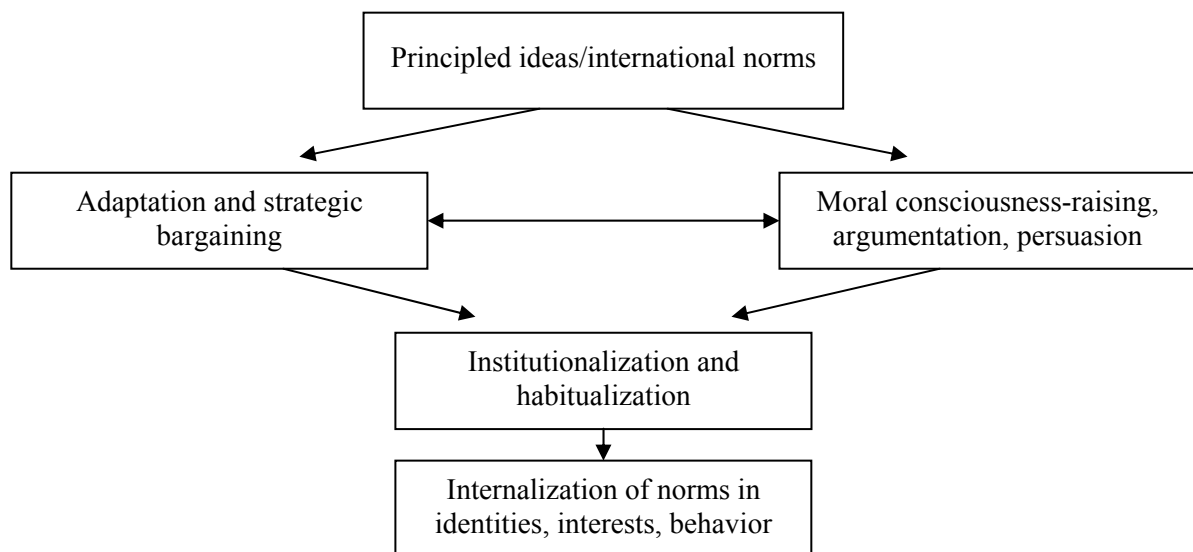


Figure 2.2. The process of norms socialization.

Source: Risse & Sikkink 1999:12.

The five phase Spiral Model does not assume evolutionary progress. Rather, it identifies stages where governments might return to repressive practices, and describes the actors and interaction modes that are dominant in each phase, illustrated

in Table 2.1. It also poses four hypotheses about what distinguishes a state that has reached a certain phase.

Table 2.1. The spiral model, dominant actors and dominant interaction modes.

| Phase | 1. Repression | 2. Denial | 3. Tactical concessions | 4. Prescriptive status | 5. Rule-consistent behaviour |
|----------------------------------------------|-------------------------------------|-------------------------------------|--------------------------------------------------------------------------|----------------------------------------------------|-------------------------------------------|
| Dominant actors moving process to next phase | Transnational human rights networks | Transnational human rights networks | Transnational networks and domestic opposition | National governments and domestic society | National governments and domestic society |
| Dominant mode of interaction | Instrumental rationality | Instrumental rationality | Instrumental rationality → rhetorical action → argumentative rationality | Argumentative rationality and institutionalization | Institutionalization and habitualization |

Source: Risse & Sikkink 1999:32.

In *phase 1: repression and activation of network*, there is a repressive situation in the “target state”, where domestic opposition is unable to challenge the government. To activate the transnational networks, some minimal links with the domestic opposition is necessary. The initial activation of the transnational network is often the result of a particularly awesome violation of human rights, such as a massacre. *Only if and when the transnational advocacy networks succeeds in gathering sufficient information on the repression in the “target state,” can it put the norm-violating state on the international agenda moving the situation to phase 2* (hypothesis 1) (ibid: 22).

In *phase 2: denial*, information about the human rights practices of the “target” is produced and disseminated with the cooperation of domestic organizations. The transnational network now starts appealing to the international community to condemn the practices of the target state. The norm-violating states almost always respond with “denial” – they refuse to accept the validity of human rights norms, and the suggestion that they are subject to these norms. Governments seldom reject human rights openly, but refer to an allegedly more valid norm, such as national sovereignty. If the government cares little about international pressures, they might kill of domestic opposition. This is more likely in an environment where a norm has recently emerged and is still contested, than when a norm has gained more influence, thus the denial phase is likely to disappear in cases of more fully institutionalized

norms. *The transition to the third phase...primarily depends on the strength of the transnational network in conjunction with the vulnerability of the norm-violating government to international pressures* (hypothesis 2) (ibid: 22-24).

In *phase 3: tactical concessions*, if international pressures escalate, the norm-violating state undertakes some cosmetic changes to pacify international criticism. This might give domestic opposition the courage and space to mount their own campaigns of criticism against the suppressors. Here, governments may break the upward spiral by arresting or killing key leaders, which decapitates the domestic movement. If not, domestic opposition gains strength, and the fully mobilized domestic NGO networks linked to the global human rights polity can be activated at any time, pressuring “from above” and “from below”. Norm violating governments no longer deny the validity of international human rights when they start making tactical concessions, and “shaming” of norm-violating governments become particularly effective. Governments start arguing over human rights violations, a process which at first resembles rhetorical action, where justifications are meant to further one’s interests without challenging the validity claims inherent in these interests. They become “entrapped” in their own rhetoric talking the human rights talk, and the situation often gets out of their control. This is partly because World Time may evolve rapidly at the same time as the targeting of norm-violating states. Now, the logic of arguing takes over. INGOs and governments now start taking each other more seriously, and engage in true dialogues about how to improve the human rights situation. *Resulting from either a regime change or from “controlled liberalization”, this stage in the socialization process marks the transition to “prescriptive status”* (hypothesis 3) (ibid: 25-28).

In *phase 4: prescriptive status*, actors regularly refer to the human rights norm when describing and commenting on their own behaviour. The validity claims of the norm are no longer controversial, even if actual behaviour continues violating rules. Establishing if actors believe in what they say or if they have only instrumental or rhetorical support for human rights is ultimately impossible to establish – what is important is if their words and deeds ultimately match. *Governments are considered*

as accepting the validity of human rights norms if and when: 1, they ratify the respective international human rights conventions including the optional protocols; 2, the norms are institutionalized in the constitution and/or domestic law; 3, there is some institutionalized mechanism for citizens to complain about human rights violations; 4, the discursive practices of the government acknowledge the validity of the (domestic or international) audience, no longer denounce criticism as interference in internal affairs, and engage in a dialogue with their critics (ibid: 29).

In *phase 5: rule consistent behaviour*, governments might accept the validity of human rights norms, but still human rights violations may occur. This might be because they are not in control over the police and military forces who commit the violations. It is therefore crucial that the domestic-transnational-international pressure is sustained. *Sustainable change in human rights conditions will only be achieved at this stage of the process when national governments are continuously pushed to live up to their claims and when the pressure “from below” and “from above” continues* (hypothesis 4). Only then can the final stage in the socialization process be reached, whereby human rights norms are fully institutionalized domestically and norm compliance becomes a habitual practice and is enforced by the rule of law.

2.3 Influences on TNC Human Rights Strategy

In their pursuit of profit TNCs influence, and are influenced by a large set of forces. At a minimum these forces comprise the *primary* or internal stakeholders, such as management, stockholders, employees, lenders and suppliers, who have a direct interest in the financial health of the corporation, and are vital to its survival and success (Shierbeck 2000: 164). Stakeholders can be defined as “the groups and individuals who can affect, or are affected by, the achievement of an organizations mission” (Freeman 2002: 107), and thus have a “legitimate claim on the organization to participate in the decision-making process” (Hummels 1998: 1408). In practice the degree to which certain groups affect or are affected by an organization varies greatly

and so does their legitimacy concerning claims on the organization (ibid; Freeman 2002: 117).

Some stakeholders do not exert a direct influence on the corporation's financial situation, but are in a position to influence those stakeholders who have such influence. These *secondary* or external stakeholders include such diverse groups as the local community, the media, the courts, the government, special interest groups, the general public and society (Hummels 1998: 106-107; Lawrence 2002: 1). Thus, "it is...in the interest of the corporation to live up to the expectations of both internal and external stakeholders" (Shierbeck 2000: 164). Even Milton Friedman, who famously advocated that the sole responsibility of business is to maximize financial return to shareholders, maintained that businesses should comply not only with the law but also with the norms and expectations of the societies within which they operate (Zadek 2001: 53, 138). In Friedman's classic model of corporate responsibility, external pressures on a corporation define its social obligations, not the moral instincts arising from within (Seidman 2003: 392).

In an interlinked world with a lack of regulation, companies have the opportunity to address social and environmental aspects of their performance, but also to externalize social and environmental costs and influence governments who seek their investments: "Different stakeholders, after all, have very different 'social' interests. The need must therefore be to identify and enhance the drivers of corporations' more progressive engagement" (Zadek 2001: 8).

2.3.1 A New Political, Communicating and Economic Reality

To start with, the new expectations placed on TNCs, and new forms of 'corporate citizenship' have emerged within the context of an increasingly globalized and interlinked world, also termed the 'New Economy' (Zadek 2001: 26-30). The New Economy can be seen as a social revolution that implies radical change in the nature of the institutions of the state and business. It is characterized by the *acceleration of every aspect of social life*, the *collapse of geographical distance* as a basis for

defining and sustaining difference, and the *growing significance of knowledge and innovation* as the primary source of business competition and economic value (Ibid: 8). The forces of globalization work on three levels: the economic, the communicative and informative, and the political (Amnesty International and Pax Christi 1998: 15).

On the *political* level, states no longer alone control global developments. Non-state actors such as TNCs and NGOs have gained significant influence in several areas (Amnesty International & Pax Christi 1998: 16), making the vision of the powerful state sovereign increasingly anachronistic (Sullivan 2003: 307). This has, together with the context of neo-liberal institutional arrangements associated with globalization and the failure of state bureaucracies, shaped the political action of states, social movements and NGOs, shifting efforts and resources towards private forms of regulation (Bartley 2003: 447; O'Rourke 2003: 4). Along with NGO activity, a general rise of identity and lifestyle politics since the 1960s is also shaping the expectations placed on companies. Lifestyle politics has supplemented the traditional economic/political debates with debates related to for instance race, gender, sexual orientation consumerism and environmentalism. The norm that TNCs should observe human rights can itself be seen as an identity and lifestyle statement (Muchlinski 2001: 34-35).

Regarding *communication and information*, a 'death of distance' intrinsic in information networking is one of the most important forces shaping society today. Immediate communication and spread of information makes possible constant interaction between all kinds of actors, from manufacturers to consumers, and from politicians to special interest groups (Amnesty International & Pax Christi 1998: 16). This change in proximity puts increasingly diverse communities together in the workspace, and the communications networks made possible by the Internet has vastly increased the ability of NGOs to exert global influence (Zadek: 27-29; Amnesty International & Pax Christi 1998: 16; Eide 2000: 29; Russell 2002; Sullivan 2003: 314). NGOs can influence how corporations are presented in the media, which

again plays a central role for stakeholder – notably consumer – opinions of the corporation and for forming the norms of corporate behaviour (Zadek 2001: 28; Shierbeck 2000: 164).

On the *economic* level, there has been a worldwide integration based on the free market economy, and a single global market where national borders no longer effectively influence the distribution of capital, information labour and goods (Amnesty International & Pax Christi 1998: 15). The features of the New Economy imply acceleration of the product innovation cycle, brand recognition, and share trading. Economic wealth is located increasingly in the image and social meaning of the product rather than its production, making intangible assets, such as intellectual capital, skills, research and development, brands, relationships and reputation more important. This is illustrated by the estimate that one-quarter of the world's total financial wealth is tied up in the brand value of companies. Companies may try to gain competitive advantage through integrating good social practices into their core business strategy, adding value to their branded products and attracting the best employees (Zadek 2001: 8, 27-29). Further, with the emergence of lifestyle politics, a growing number of ethical consumers have become targets for the ethical corporation (Muchlinski 2001: 34-35).

The Importance of Reputation

As a result of these new economic realities, *reputation* has become a vital element of the economic performance of companies today. The images of different stakeholders through their experience of the company is what makes up the corporate reputation, and these images may include the attributes of their products, relationships with stakeholders, values and programs (such as environmental and social concerns), and credibility in the form of expertise and trustworthiness (van Riel 2002: 96). These images are a collection of positive and negative impressions from primary (personal experience), secondary (being informed about an organization by a like-minded person) and tertiary (paid-for and non-paid-for publicity) sources constituting an overall impression stored in people's minds (ibid: 63). Images are offered to external

stakeholders through cues of symbols, communication and behaviour, such as mass media, newsletters, annual reports etc. (Brønn 2002: 92).

Studies show that a good reputation is a crucial source of competitive advantage for organizations, and that a positive image has a favourable influence on attracting new personnel, keeping existing personnel, attracting foreign capital, maintaining a favourable stock price, limiting legal costs, and so on. Reputation is certainly important when a brand, and thus the impression of the company behind the brand, is used to add value to a product, because the more known an organization is, the more intense are the evaluations people can give. Studies also show that the attitude and behaviour of an organization's employees with regards to the external groups is of overriding importance for a company's reputation, and that communication and symbols play an important role (van Riel 2002: 63-68).

2.3.2 TNC Complicity and Responsibility

There are three broad reasons why the human rights impacts of TNCs are of concern, namely the direct actions and impacts of companies, their influence on the public policy process and a perception of inadequacy of international law to regulate their operations (Sullivan 2003: 305). The human rights that international business encounters *directly* through their activities are, at least in the first instance, often of social and economic character (Skogly 1999: 241). Generally, the most notorious TNC abuses occur in the developing world, including for example complicity in the brutality of host states' police and military, the use of forced and child labour, suppression of rights to freedom of speech and association, violations of rights to cultural and religious practice, infringement of rights to property, (including intellectual property), and gross infringements of environmental rights (ibid; Kinley & Joseph 2002: 7). Empirical studies show that there is often a chain of events that occur, where the violation of economic and social rights leads to the violation of civil and political rights (Skogly 1999: 243).

Furthermore, TNCs are seen not only as economic actors, but also as ‘national corporate citizens’ trying to influence the government’s *public policy* in the countries they operate. Since TNC affiliates are normally among the largest corporations in the host countries with huge resources to back them, they have substantial potential influence on the host government (Herkenrath & Bornshier 2003: 109). This may inhibit the progress of human rights in the host countries of the developing world, as transnationals sometimes turn to and support the repressive mechanisms of their host countries, and repressive regimes actively seek the capital and connections associated with foreign direct investment (Spar 1999: 2-3). Moreover, studies indicate that foreign investors have had an affinity for authoritarian regimes because authoritarianism provides advantages to foreign investors relative to their experience in peripheral democracies (Oneal 1994: 569, 583). There has been a history of companies of companies opposing or working to undermine legislation that provides social, environmental and economic protection of citizens (Sullivan 2003: 308; Seidman 2003: 382).

Despite this, there has been a persevering focus on *states* in international law that has tended to shield other actors from greater responsibility. Perceived weaknesses in regulatory frameworks, at the international level and in developing countries, have exacerbated concerns about corporations and human rights (Sullivan 2003: 303-307). Moreover, processes of privatization, economic integration, deregulation, and liberalization of foreign investment regimes and institutions continue to give firms more freedom in their operations (UNCTAD 1999: 1; 2004; Bartley 2003; 447; O’Rourke 2003; 4; Sullivan 2003: 307). While there has been a significant expansion of global economic rule making, it has been aimed primarily at facilitating a functioning global market and has not been matched by comparable efforts to deal with global concerns such as the environment, human rights and poverty (Kell & Ruggie 1999). It is argued that through bodies such as the World Trade Organisation, the World Bank and the International Monetary Fund, the acceleration of economic globalisation has been prioritised at the expense of social welfare and human rights considerations, and that TNCs are granted numerous rights and very few enforceable

duties (Kinley & Joseph 2002: 8; Frynas 2003: 275, 283; Sullivan 2003: 303-304; see also UNCTAD 2004).

Because of their operations, some TNCs will be more exposed than others to environments where human rights abuses take place (Kell & Ruggie 1999). Further, the nature of a TNC's operations in countries where abuses take place will determine their perceived complicity in and proximity to human rights violations. Jungk (1999: 177) identifies three degrees of connection with human rights violations:

- If there is *no connection*, the company's operations are so small that they do not have any effect on the government's ability to hold power or the political activities in the area they operate.
- An *indirect connection* can be established when the norm-violating regime is largely supported by revenue from the company's operations, or the company is in an industry (e.g. armaments) which enables the government to remain in power.
- A *direct connection* exists if human rights violations arise directly in relation to the company's operations or products. This includes the production of equipment used for suppression or torture and the use of forced or child labour. It also includes violations committed by state security forces guarding company facilities or personnel.

The establishment of direct involvement of TNCs with host country violations of human rights is particularly evident in case of *joint ventures*, where the ownership and operation of a venture is divided between the state and the firm. If it can be shown that TNCs derive benefits from engaging in joint ventures which involves state-sponsored violations, or engage in direct violations when operating the venture, the firm will be "directly liable for those violations on a joint and several basis with the host state...irrespective of the private legal status of the firm" (Muchlinski 2001: 45-46; see also ICHRP 2002: 125-132).

However, even in cases where TNC operations have no apparent connection with human rights violations, it is increasingly recognized that this does not automatically free companies from responsibility for human rights conditions. Human rights organizations maintain that in cases where there is no direct connection, TNCs can still contribute to an *enabling environment* for human rights by economic contributions, commitment to the UDHR and public statements. Further, where there is an indirect connection, TNCs can exert influence over suppliers, subcontractors and business partners, and consider the impact of their products on human rights. In the case of a direct connection and direct control over operations, the company naturally has a direct responsibility to make sure that the appropriate human right considerations are taken with regard to labour standards, security standards and the like (Amnesty International & Pax Christi 1998: 47; Sullivan 2003: 313).

2.3.3 NGO Regulation and Dialogue

In a globalized society, NGOs have during the last decade emerged as a major influence on the TNC/human rights issue, acting as ‘civil regulators’ of corporations through public campaigning and other forms of pressure. More than any other societal actor, NGOs have driven the process of popular education and political and economic mobilization around social and environmental issues, and extended the perception of corporate responsibilities (Zadek 2001: 9; Chandler 2000:13). The efforts of NGOs have attempted to bridge the imbalance between economic globalization and its governance structures (Kell & Ruggie 1999). Further, as human rights NGOs have had only limited success in persuading governments to sanction repressive regimes, the consequence has been that activists have started targeting TNCs to make them take responsibility (Sullivan 2003: 308). Ultimately, corporate image has been the key to widening human rights responsibilities of companies and making them comply (Duke 2003: 346). NGOs have used protests, boycotts and shareholder activism, and have tried to define norms and performance measures for TNCs, advocating the establishment of binding codes of conduct comprising implementation mechanisms (Sullivan 2003: 308; Amnesty International 1999).

Part of the effectiveness of NGOs stem from their ability to use the Internet to mobilize broader social movements and gain media attention. NGOs have relied on hi-tech, low-cost means of grassroots advocacy around single issues, and their decentralized and flexible structures combined with non-formalized communication and decision making has proved very effective. Furthermore, some NGOs, including human rights groups such as Amnesty International and Human Rights Watch, have transnationalized their structures in a manner comparable to TNCs (Kell & Ruggie 1999). Contributing to their credibility and advocacy power, NGOs build their legitimacy on a non-financial purpose and purport to represent the best interests of the wider community. They therefore have the closest to what can be called 'institutional trust' (Zadek: 2001: 46).

The mechanism where NGOs and other organizations pressure TNCs to enhance their social and environmental performance is referred to as *civil regulation* (Zadek 2001: 55). It is based on different social control strategies, like activist campaigning, provision of information and informal shaming processes, aiming to weaken companies' market performance by undermining their reputation (ibid; Bartley 2003: 433; Seidman 2003: 383; Sullivan 2003: 307). It mostly involves collective processes through loose forms of social organization. Civil regulations lie between formal or statutory structures of public regulation, and market mechanisms of individual and collective preferences based on the use and exchange value of goods and services. The basic idea is that civil campaigns will affect a company's reputation to the extent that it affects its business performance. According to the civil regulation theory, the financial performance of a company whose reputation is tarnished should revitalize if the company's ethical behaviour has improved in the judgement of key stakeholders. There is considerable evidence that companies respond to civil campaigns, however this does not hold in general. When the consumer is not affected directly, the bad publicity around specific events does not have a long-term negative effect on company shares or dividends. Still, companies act as if the financial markets respond, even though ethical behaviour has less effect on the financial bottom line. There are two main explanations for this. The first is that companies think they know

better than the financial markets how the pressures of civil regulation will affect long-term performance, and that markets will eventually respond to their ethical performance as well – the ‘Goyder effect’. The alternative explanation is that companies are systematically over-estimating the financial significance of reputation, leading companies to be less responsive to pressures in the long term as financial returns of ethical behaviour is not realized – the ‘Korten effect’ (Zadek 2001: 56; 60-62; Zadek & Forstater 1999: 69-72).

While at the same time adopting a confrontational tactic, there has also been a growing trend of NGOs engaging directly with TNCs to improve social and environmental performance. This means that NGOs are increasingly engaging in consulting and dialogue with TNCs (Zadek 2001: 81). NGOs have used the ‘business case’ as a point of entry to gain access to companies. This has given them the opportunity to raise specific concerns or issues and develop an ongoing relationship and dialogue (Sullivan 2003: 315). According to Chandler (2000: 12-13), “It has proved essential for protest and dialogue to go hand in hand”. Much of the current discourse around governance advocates the mutual benefits that would arise from dialogues and partnerships between corporations and NGOs, national governments and international organizations. In their collaboration with business, interest groups for instance assist corporations with their internal operations by drawing up codes of conduct, and developing and carrying out reporting and auditing systems (Richter 2002: 9-11). This is because NGOs have knowledge of social issues important to corporate reputation which companies lack. Furthermore, because of the NGO’s credibility and ‘institutionalized trust’, companies often turn to these organizations for ‘lent trust’ in seeking to build their own credibility (Chandler 2000: 12-13; Zadek: 2001: 46-47).

2.3.4 TNC Vulnerability to Criticism

Some companies are more vulnerable to external criticism than others because of the way they are organized, because they market a global brand and because of the

climates in their home country and the countries in which they operate. If a global corporation has spread its production and marketing across numerous countries, and countries where human rights abuses take place, any one decentralized business unit can make a mistake that will tarnish the reputation of the global brand (Santoro 2003: 411). As noted above, TNCs not only bring capital and technology with them abroad. They also bring their brand names, their reputations and their international images. In addition to being a potentially valuable asset, these features also make them vulnerable. To a much larger extent than local firms or small investors, TNCs are put in the ‘spotlight’ and are subject to constant scrutiny (Spar 1998: 8; 1999: 8).

Consumer-product firms are especially vulnerable to criticism and boycotts, but generally highly visible brand names will be ideal targets for campaigns (Tangen 2003: 3). Activist groups have tended to target and spread negative publicity about image-conscious companies with recognizable brand identities (Bartley 2003: 445; Sullivan 2003: 314). How exposed and vulnerable a company’s identity is will depend on how it uses its brand in its operations. Three rough categories of corporate identity can be distinguished (Brønn 2002: 94). Corporations with a *branded identity* have a number of brands and it is nearly impossible to know who the parent company is. With an *endorsed identity* the corporation’s subsidiaries have their own visual style and distinction, but with the parent company still a recognizable background figure. Finally, if companies have a *monolithic identity* it means that the entire corporation with all its products and division basically uses the same visual style and logo, and the parent company is instantly recognized.

However, some corporations will also sooner be put in the spotlight and be harder hit by NGOs than others, because NGO activities often are politically driven and concerned with maintaining a high profile for their particular campaigns. This may lead to arbitrary and selective targeting of TNCs to obtain support from a consuming public in a manner not dissimilar to that of a service industry, which does not ensure that all corporations are held equally to account (Muchlinski 2001: 36, 43-44). The targeting of TNCs will also depend on the presence of NGOs in the company’s home

country and its general human rights climate. Some claim that a source the UK's strength in the field of corporate citizenship is its "over abundant endowment of what are probably the world's most powerful set of development, environmental and human rights organizations", grown out of UK's colonial past, and that the presence of INGOs such as Amnesty International and Oxfam, has made UK companies among the world's most sophisticated operators when dealing with NGOs (Zadek 2001: 32). The British history of confrontation between NGOs and companies has also contributed to form a huge infrastructure of researchers and consultants to advise companies on how to interact with different stakeholders.

Some countries have also developed distinct 'citizenship cultures' which contributes to place greater expectations on TNCs regarding their social performance. According to Zadek (2001: 31-32), such citizenship cultures are evidenced in for instance European and American firms. The socially responsible investment of UK and US firms is in part a reaction to the well-known short-termism of their respective financial markets, and has led to a tradition of measurement and transparency about social and environmental performance. While the US corporate citizenship has many manifestations, the British approach has become more influential globally during the last decade. UK firms have sought to regain some of the legitimacy they had lost as a result of the aggressive privatization and social dislocation in the 1980s, by creating social indicators and reports and building a new social contract with the public. The UK model is a blend of the unfettered markets and privatized provision of the US, and the European tradition of social partnership.

2.3.5 Policy Orientation

Since TNCs by definition operate in a number of countries and often consist of a multitude of subsidiaries over which they have a varying degree of control, the level at which operational standards are defined and how they are disseminated through the group of companies needs to be given attention. Perlmutter (1972) classifies the culture and style of management influencing the policies of TNCs into three

categories. These represent sets of attitudes in some key decision areas, which might be evidenced in TNC industrial relations policies. This classification includes the *ethnocentric* (home country oriented), *polycentric* (host country oriented), and *geocentric* (universally oriented) company, as is illustrated in Table 2.

Table 2.2. Three types of headquarters orientation toward subsidiaries in any international enterprise.

| Organisation Design | Ethnocentric | Polycentric | Geocentric |
|--------------------------------------------------|--------------------------------------------------------------------------------------|----------------------------------------------------------------------------|------------------------------------------------------------------------------------------|
| Complexity of organization | Complex in home country, simple in subsidiaries | Varied and independent | Increasingly complex and interdependent |
| Authority: decision-making | High in headquarters | Relatively low in headquarters | Aim for a collaborative approach between headquarters and subsidiaries |
| Evaluation and control | Home standards applied for persons and performance | Determined locally | Find standards which are universal and local |
| Rewards and punishments; incentives | High in headquarters, low in subsidiaries | Wide variation; can be high or low rewards for subsidiary's performance | International and local executives rewarded for reaching local and world-wide objectives |
| Communication; information flow | High volume to subsidiaries: orders, commands, advice | Little from head-quarters. Little between subsidiaries | Both ways and between subsidiaries. Heads of subsidiaries part of management team |
| Identification | Nationality of owner | Nationality of host country | Truly international company by identifying with national interests |
| Perpetuation (recruiting, staffing, development) | Recruit and develop people of home country for key positions everywhere in the world | Develop people of local nationality for key positions in their own country | Develop best men everywhere in the world for key positions everywhere in the world |

Source: Perlmutter 1972: 30.

According to Perlmutter's classification, an *ethnocentric* organizational design implies the idea that foreigners are second-class citizens and a strong belief in the superiority or reliability of one's people, values, standards and ideas to foreign ways (Perlmutter 1972: 22). The TNCs generally wholly own their subsidiaries, which are managed by managers from the home country, making them cultural as well as economic extensions of the parent corporations (Roberts 1972: 117). Here, company policy is set, and as far as possible put into practice, from the headquarters in the

country of origin, and practices are standardized across the globe (Giddens 1993: 544).

A *polycentric* design means that each subsidiary is run according to host-country standards, leaving industrial relations to local management and limiting learning from other countries (Perlmutter 1972: 29). The headquarters in the country or countries of origin of the main company establish broad guidelines within which local companies manage their own affairs (Giddens 1993: 545). The subsidiaries have local participation in capital ownership, and are managed by nationals of the host country, making the culture pattern of management predominantly that of the country in which they are situated (Roberts 1972: 117).

Finally, the *geocentric* company is world centred in its ownership, pursuing every opportunity to optimise performance, seeing the nation state as on the whole a barrier to this process (Perlmutter 1972: 28). They are international in their management structure, and staff is appointed irrespective of nationality: “The cultural climate of the corporation is like an international agency of the United Nations, divorced entirely from the pursuit of the national interests of any ethnic group or nation State” (Roberts 1972: 117). As Perlmutter (1972: 29) states:

“Geocentrism is a collaborative approach to finding the best way, with local variations in mind. The geocentric approach is the search for the best industrial relations policies which promote values...and organisational requirements...to meet worldwide standards.”

Perlmutter also proposes that geocentric TNCs are more likely to become more *transideological* than even unions or states. Such companies will seek “by...social policies, to gain legitimacy, that is to gain the status of being perceived as an indispensable institution in view of its consumers, suppliers, nation States, and particularly labour...To be viable legitimate and indispensable the multi-national firm will have to be measured as to the degree it achieves social architectural standards” (ibid: 33). The majority of transnationals are at the moment polycentric – with exceptions like the more ethnocentric and tightly controlled Japanese companies – but there is strong movement towards the geocentric type (Giddens 1993: 545)

As this typology is meant to capture the source and prevalence of company value orientation dependent on organization design, also when interacting with non-state actors, it presents an opportunity to stipulate some implications company structure may have for human rights orientation, how the TNC accommodates external influence, and how human rights strategy is implemented group-wide. This will be considered when proposing an operational framework for capturing the structural and contextual factors influencing TNC human rights strategy in the next chapter. In this context, it is important to remember that TNCs operate in an international system in which their legal status is unclear and regulation is weak, and unlike governments they can not be legally compelled to support human rights beyond complying with host-country laws (see Lawrence 2002:4).

3. Operationalization and Methods

3.1 Introduction

Bringing together the different elements of the previous chapter, this chapter presents a systemized operational framework for analyzing TNC human rights strategy, based on identifiable propositions and indicators. A precondition for making valid inferences is a strong *construct validity* – i.e. establishing correct operational measures for the concepts being studied (Yin 2003: 35). Dealing with several ‘contested concepts’ which may include a variety of meanings, such as ‘human rights strategy’, choices is here made among the constellation of potentially diverse meaning to formulate specific systemized concepts and indicators. These choices are intertwined with the theory, because while proper concepts are needed to formulate good theory, a good theory is also need to arrive at the proper concepts (Adcock & Collier 2001: 530-532).

The framework presented comprises an operationalization of the human rights strategies presented in chapter 1, and describes a ‘corporate Spiral Model’ to explain these strategies as a socialization of human rights in TNCs. The framework integrates these elements with the contextual and structural factors which together establish the perceived degree of TNC complicity in human rights abuses, the degree of pressure exerted and TNC vulnerability to this criticism, and what to expect and not to expect from this mobilization of pressure. Following the operationalization, I make some methodological considerations as to how this is framework is applied to the case of Shell. This includes questions of approach and design, considering the data sources used for analysis, questions of which analytical techniques will be utilized, and assessing the potential strength of the analysis.

3.2 Operational Framework for Analyzing TNC Strategy

Integrating the theoretical framework, contextual factors and organizational traits presented above, I propose a three-level framework for *explaining change the human rights strategy of a reactive TNC*, illustrated in Figure 3.1.

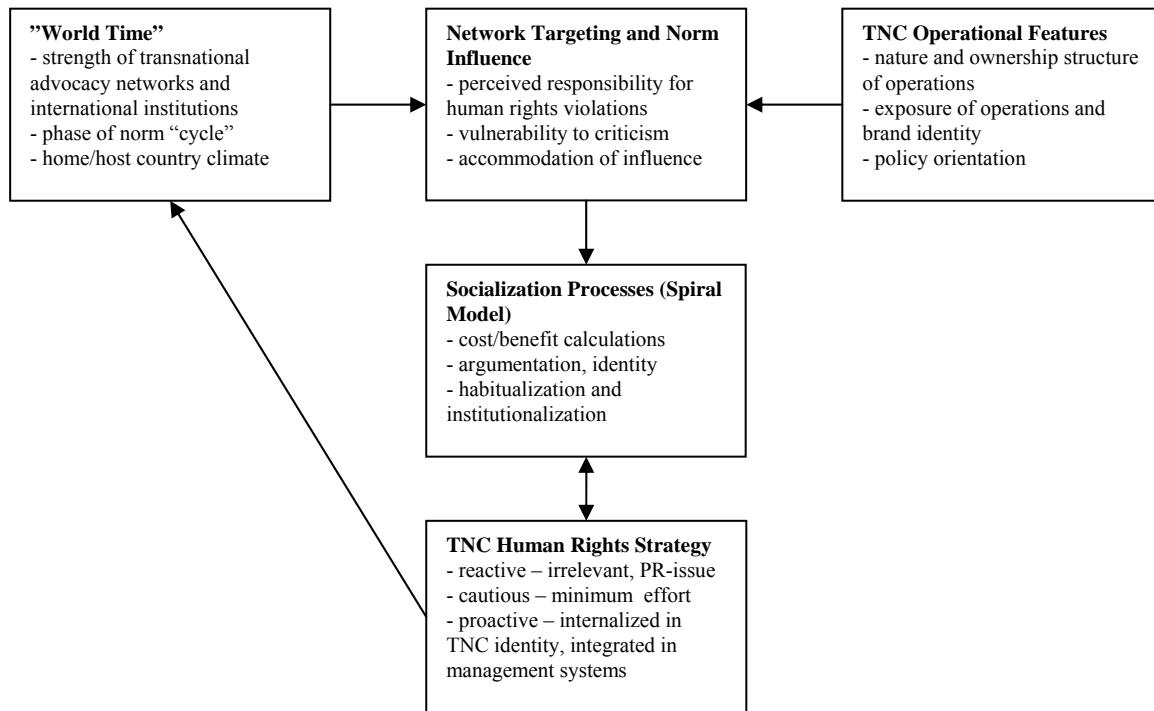


Figure 3.1. Dominant contextual forces, operational features, and processes influencing the strategy of TNCs complicit in human rights violations.

This model includes a "context/structure" level, where the context is represented by the social structure of World Time and its specification of the TNC human rights responsibility norm, the TNC community's cumulative acceptance of the norm and the country climates in which TNCs operate. The structural and operational features of TNCs include the nature and ownership structure of their operations in a given country, the company's exposure to environments where human rights occur, its brand identity and the source and prevalence of company value orientation. Together these factors determine the if a specific TNC is targeted as a consequence of its perceived responsibility for human rights violations, how vulnerable the TNC is to criticism, the degree to which prior policy is inconsistent with the norm, and how the company accommodates external pressure. The second "process" level represents the

processes and stages of socialization a TNC goes through if it is targeted and put on the agenda by the norm promoters, operationalized through the Spiral Model. The third “outcome” level indicates whether this process has had any effect on company policy, and the possible human rights strategies that may be the result. As targeting of a company does not necessarily make a company change strategy, all of the three strategies are possible outcomes. The strategy of a TNC will affect which socialization mechanisms are dominant implicated by the double arrow between the “socialization” box and the “strategy” box. Further, the resulting strategy a TNC pursues will influence if the norm gains more or less acceptance in the business community collectively. This is illustrated by the arrow leading back from the “strategy” box to the “World Time” box.

3.2.1 World Time and the Norm Life Cycle

To operationalize “World Time” and the “Life Cycle” of the TNC human rights responsibility norm, a rough account of the dominant norm entrepreneurs and norm promoters, and the chronology of the development of the norm is necessary. A possible norm life cycle for the norm that TNCs should be responsible for promoting and protecting the rights of the UDHR is illustrated in Figure 3.2. As noted, the most important advocates of the norm that TNCs should be responsible for human rights have been human rights NGOs. Though the UN has continued to place responsibility for human rights at the international level on states and has not so far addressed the human rights responsibility of specific corporations, NGOs have relied on the language of the UDHR and the standard-setting and implementation mechanisms developed by the UN as benchmarks when developing their approach to TNCs. NGOs also have considerable influence on UN policy through their consultative status (Eide 2000: 25).

Although concern over the economic, social and political impact of TNCs in developing countries led to the creation of a UN Centre on Transnational Corporations in 1974, its attempts to formulate UN codes of conduct for TNCs were

stalled by the focus on the positive impact on foreign direct investment (FDI) in the 80s, and abandoned in 1992 (UNCTAD Website 2005.05.24; Muchlinski 1995: 7-10; Richter 2002: 2).⁷ Other initiatives to make corporations accountable, such as the 1976 Guidelines for Multinational Enterprises launched by the Organisation for Economic Co-operation and Development (OECD), and the 1977 Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy developed by the International Labour Organization (ILO), has had only limited effect as they are non-binding (Amnesty International & Pax Christi 1998: 21-22; ICHRP 2002: 69).

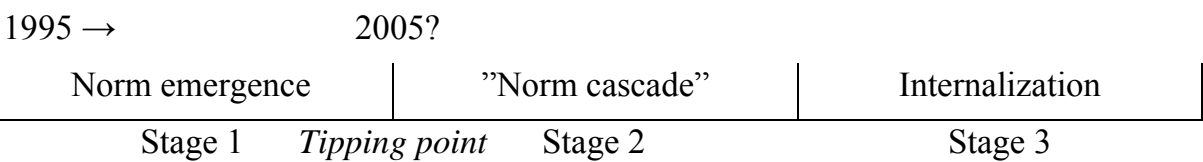


Figure 3.2. The cycle of TNC human rights responsibility.

In the beginning of the 90s human rights groups, who had regarded states as their traditional targets, began focusing on TNCs. The UK section of Amnesty International (AIUK) formed a Business Group in 1991, and in 1995 Amnesty as a whole adopted a resolution to encourage companies to use their influence in defence of human rights (Chandler 2000: 8). At the same time, other human rights organizations, such as Pax Christi International and the US Human Rights Watch started pursuing the same agenda (Lawrence 2002: 4). NGOs now started formulating practical policy suggestions for TNCs regarding human rights issues. Earlier, NGOs had sporadically exposed and condemned corporations because of child labour and sweatshop working conditions (Chandler 2000: 9). From the mid-90s these efforts became more concerted and included a general and extensive human rights approach. In 1995 AIUK and Human Rights watch launched campaigns to get large companies to assume responsibility for human rights, arguing that the UDHR of 1948 calls on “every individual and every organ of society...to... promote respect for these

⁷ In 1993 the programme in TNCs was moved to UNCTAD’s division on Investment, Technology and Enterprise Development (DITE) (UNCTAD Website 2005.05.24).

rights...and...secure their universal and effective recognition and observance” (UDHR 1948: Preamble; Le Monde diplomatique 2000.12.08).

These campaigns and their exposures of corporate complicity in human rights violations caused great reputational damage to several big companies, such as Royal Dutch/Shell (chapter 4), the British Petroleum Company, Total, Uncoal, Freeport-McMoRan, Nike, Disney, Heineken and Carlsberg. This changed the terms of the TNC/human rights issue away from a focus on the positive impact of FDI, and made human rights a high priority in the public relations and strategic planning of many companies (Human Rights Watch Website 2005.05.24; Eide, Bergesen & Goyer 2000: 1). In the second half of the 90s, Amnesty International and other NGOs published human rights guidelines for TNCs with the UDHR as a basic reference (Chandler 2000: 8-9, 13; Amnesty International 1998). Other actors, such as shareholder groups, pension funds and money managers, now began to see corporate human rights practices as one criterion for investment decisions (Human Rights Watch Website 2005.05.24).

Towards the end of the 90s, the UN work on TNCs and human rights was also revitalized through debates and reports which acknowledged the significance of TNCs for human rights (Eide 2000: 36-37; UNCTAD 1999: 4-5; UNDP 2001). In 2000, UN Secretary General Kofi Annan launched the Global Compact initiative, a voluntary corporate citizenship initiative encompassing corporate guidelines on human rights (Rahbek 2003: 8-9; UN 2005.02.08). In 2003, the UN Sub-commission on the Promotion and Protection of Human Rights approved the ‘*UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*’, on which it had worked since 1999 (UN Norms 2003; Amnesty International 2004b). These norms focus on direct responsibilities of TNCs, and is influenced and supported by a wide range of human rights NGOs (Amnesty International 2004b; Human Rights Watch 2004). Furthermore, in 2003 Amnesty International compiled a six page human rights checklist for companies based on the UN Norms (Amnesty International 2003). However, as a draft proposal, it has no legal standing at the moment (UN 2005: Paragraph 18). Ultimately major human

rights organizations like Amnesty International and Human Rights Watch, and international organizations such as the UN maintain that states are primarily responsible for the realization of human rights, but that companies should promote human rights within their spheres of activity and influence, especially when states fail to fulfil their international obligations (Amnesty International 2002; 2004b; Human Rights Watch 2005:05:24; UN Norms 2003, Section A.1.and Preamble).

A “small but significant number” of corporations today are moving towards greater engagement with stakeholders (Lawrence 2002: 1), and accepting greater responsibility for human rights. This leadership group meets regularly with NGOs to discuss codes of conduct and implementation (Human Rights Watch 2005:05:24). In 2002, a total of twenty-six of organizations listed at the Business and Human Rights Resource Centre (operating in partnership with Amnesty International), were reported to have policies that refer explicitly to the UDHR, and twelve had policy commitments to human rights generally without direct reference to the UDHR (Sullivan 2003: 316). Today, this number has more than doubled, with 58 companies referring to the UDHR and 28 committing to human rights in general, and the list includes some of the largest and most influential companies in the world (Business and Human Rights Resource Centre Website 2005.05.25).

3.2.2 TNC Operational Features

As discussed in the previous chapter, the degree of TNC complicity in human rights violations is determined by its proximity to and degree of connection with these violations in its operations (see 2.3.2). If there is no connection, mobilization against a company is unlikely. There might however, be calls from human rights community to use company influence to defend and create an ‘accommodating environment’ for human rights. As noted, the company is most clearly seen as complicit in human rights violations in the case of joint ventures. Further, TNC vulnerability to targeting will depend on how profiled and recognizable a company is, and how accepted and institutionalized the norm is internationally (World Time). The recognition and

vulnerability of a company is conditioned by its type brand identification, categorized by Jungk (1999: 177) into branded, endorsed and monolithic identities (see 2.3.2). This implies that high-profile companies operating in many countries (where human rights violations occur) are more likely to be targeted and damaged by NGO campaigns, than less recognizable, inconspicuous companies. Furthermore, I expect that companies based in countries with a strong human rights climate and a high density of human rights NGOs will be more likely targets than companies based in countries where this is not a prominent issue, and that TNCs based in countries that have developed a culture where business is sensitive to social issues will accommodate human rights more easily than TNCs based in countries where the success of a company is measured in terms of pure profit.

Regarding the significance of policy orientation, I assume that if the human rights responsibility of TNCs has not entered the international agenda and started gaining acceptance, *or* a reactive company has not yet been targeted, human rights is likely to be absent from company strategy. Human rights will in this case not be a pertinent issue for company management, and country regulations with regard to human rights – or lack thereof – will most likely be the primary source of influence on and regulation of company human rights orientation with regard to its operations. Thus, the human rights orientation of a company will then, at most, resemble a polycentric orientation in Perlmutter's (1972) terms (see 2.3.4). However, if a company or one of its subsidiaries is targeted, I assume that the company's inclination and ability to accommodate external influence and group-wide orientation and implementation regarding human rights will be influenced by the policy orientation of the company.

An *ethnocentric* company will not be very susceptible to adhere to standards coming from outside the home country headquarters, as subsidiaries are cultural and economic extensions of the parent corporations. Thus, invoking human rights concerns when addressing these companies might be difficult, unless the responsibility norm is well established in the home country and home country headquarters. However, if a company of this type starts pursuing a proactive human

rights strategy, I assume that implementation will be uniform and relatively fast, but it might be insensitive to the particular national conditions and needs of the host countries, making implementation of new management systems less than optimal.

In a human rights context, a *polycentric* design would imply that the human rights strategy of a company varies from country to country, dependent on national legislation and enforcement in the area. Subsidiaries operating in a norm-violating state will, since they identify with the host country, are managed by host country nationals and have part local ownership, be influenced by the climate for corporate human rights responsibility in the host country. Thus, I assume that if company headquarters were to pursue a proactive human rights strategy, group-wide implementation would present severe obstacles at host-country level, at least in the countries where human rights is a potentially controversial issue.

As for the *geocentric* corporation, I assume that such a company will be more sensitive than the other two types to the possible dangers and possibilities associated with an emerging human rights agenda, as it is more concerned with its legitimacy as a global institution. I also assume that a geocentric company that pursues a proactive human rights strategy will have better chances at successfully implementing it, as such a company is sensitive to local conditions, and information flows between the subsidiaries as well as between subsidiaries and headquarters. It might however be slow and resource-consuming, as it would imply a consensual decision-making process where all voices should be heard.

3.2.3 Human Rights Strategy and a ‘Corporate Spiral Model’

The “process” level of the analytical framework suggests that as a consequence of TNC complicity in human rights abuses, the human rights community interacts with and pressures the “pariah” TNC through different socialization mechanisms operationalized through the Spiral Model. These processes are conditioned by the company vulnerabilities and attitudes discussed above, and may lead to a change in TNC human rights strategy. Operationalizing ‘human rights strategy’ means facing at

least two challenges. *Firstly*, it means determining on which rights to focus. As shown above, the human rights norm for companies promoted by human rights organizations has been, and is, under constant development. The basic benchmark used by the human rights promoters to measure TNC human rights practice has been the UDHR. It is important in this context to note that a concept such as ‘human rights’ is a collection of norms, and the mix of rules and practices that structure this institution has varied significantly over time (see Finnemore & Sikkink 1998: 891). The UDHR contains thirty articles, covering rights ranging from rights to life, to rights to rest and leisure (UDHR 1948: Articles 3 and 24).

To make an analysis of TNC human rights strategy feasible within the constraints of this thesis, some choices and limitations concerning the scope of human rights has to be made. Seeing the expectations of norm-promoters as decisive when determining the human rights responsibilities of companies, the focus of human rights organizations through their norm ‘framing’ and campaigns is crucial for establishing my human rights focus. This pragmatic approach is also founded on the fact that although NGOs use the UDHR as a general reference, the UDHR rights on which they focus may vary when targeting different companies in different settings. Thus, the human rights norms in question, both when considering TNCs in general and specific companies, will be a product of the agenda of the human rights promoters, and the implications for human rights as a result of company operations.

Secondly, indicators to measure the reactive, cautious and proactive human rights strategies identified in chapter 1 must be established, as these ideal-type strategies lack in operational specificity. This is done by letting the propositions of the Spiral Model phases represent the different human rights strategies of TNC. As both the human rights strategies of Tangen, Rudsar & Bergesen (2000: 186), and the phases of Risse & Sikkink’s (1999: 29) Spiral Model represent the degree to which an actor accepts the validity of human rights, this approach is both justifiable and feasible. More specifically, the ‘reactive strategy’, and the ‘activation’ and ‘denial’ phases both entail a denial of the validity of human rights. As the ‘activation’ phase

determines the initial targeting of a company complicit in human rights abuses, and the ‘denial’ phase is a response to this mobilization, both phases represent a reactionary strategy. This means that a *reactive* company will openly deny the norm of company responsibility for human rights when confronted with human rights issues. Further, the ‘cautious strategy’ and the ‘tactical concessions’ phase both entail rhetorical adaptation to human rights, and a minimum effort designed to further an agent’s existing interests and pacify criticism. Thus a *cautious* company will adapt rhetorically to protect its reputation, but will not take any measures to integrate human rights concerns into its organisation.

Finally, a ‘proactive strategy’ and the ‘prescriptive’ and ‘rule consistent behaviour’ phases include human rights as an integral part of an actor’s preferences and organisational arrangements, and acceptance of the validity of human rights norms. Thus, a company that has reached either the ‘prescriptive’ or the ‘rule consistent’ phase will in both cases be considered a *proactive* company, as both phases are based on the same proviso of acceptance of human rights and a change in identity and interests. The distinction will in line with the original model be if the actual behaviour of a company matches its words and leads to improved human rights conditions in relation to company operations.

Working through material and discursive mechanisms then, the degree to which TNCs have been induced into the norms of the human rights community, may be described and explained through employing a ‘corporate Spiral Model’, illustrated in Table 3.1. This model is adapted from the Spiral Model, through which – paraphrasing Risse & Sikkink (1999: 18) – ‘the variation in the extent to which TNC managements move along the path toward a proactive human rights strategy can be explained’ (see 2.2.5). It builds mainly on the same preconditions and mechanisms as that of the original model, but some adjustment to the sphere of TNCs is needed. Here ‘national governments’ are represented by ‘corporate management’. Further, TNCs have neither a defined ‘national opposition’ nor a ‘domestic society’. Thus, national opposition is here represented by ‘reformist stakeholders’, meaning the

stakeholders – such as affected communities and workers and human rights oriented employees, investors, consumers and interest groups – who most fiercely oppose the company's prevailing human rights approach and are eager to see it change. Further, 'domestic society' is represented by 'key stakeholders', implying stakeholders in a general sense who affect and are affected by the process, such as employees, stockholders, human rights experts and local communities. The logic behind this is that I expect companies that become proactive to also become more sensitive to the opinions of both internal and external stakeholders (see 2.3), and that the internal stakeholders of the company will be expected to comply with and partake in this strategy.

Table 3.1. The corporate spiral model: dominant strategies, actors and interaction modes.

| TNC Human Rights Strategy | Reactive → | | Cautious → | Proactive → | |
|----------------------------------------------|-------------------------------------|-------------------------------------|--------------------------------------------------------------------------|----------------------------------------------------|-------------------------------------------|
| Phase | 1. Complicity | 2. Denial | 3. Tactical concessions | 4. Prescriptive status | 5. Rule-consistent behaviour |
| Dominant actors moving process to next phase | Transnational human rights networks | Transnational human rights networks | Transnational networks and other 'reformist' stakeholders | Corporate management and key stakeholders | Corporate management and key stakeholders |
| Dominant mode of interaction | Instrumental rationality | Instrumental rationality | Instrumental rationality → rhetorical action → argumentative rationality | Argumentative rationality and institutionalization | Institutionalization and habitualization |

Theoretically, there are several ways a TNC may reach a proactive human rights strategy, and this is dependent on the life cycle of the human rights norm. As Risse & Sikkink (1999: 24) argue, international norms are more likely to have impact if they start gaining acceptance among the group of actors for which they are thought to apply: "Because of changes in "world time" it is possible that denial and backlash is a normative phase particular to a period in which new international norms have emerged but when they are still strongly contested internationally".

How a company reacts to pressure by human rights organizations, will then be dependent on at which moment in World Time the company is targeted. In the case of a widely accepted norm, I assume that TNCs are more likely to adhere to a proactive human rights strategy through role playing where a TNC internalizes human rights

concerns because it is the socially accepted thing to do (Type I internalization), but also by accepting the norm as the right thing to do (Type II internalization) (see 2.2.4). Thus, if a norm has not yet gained international acceptance, one would expect “pariah” TNCs to move slower towards a proactive strategy, than if the norm is more widely accepted. If the norm is more institutionalized, the denial stage is expected to disappear (see Risse & Sikkink 1999: 24).

Adopting the propositions and hypotheses of the Spiral Model to a TNC context, I propose that the process of inducing transnationals into the human rights norm of the human rights community unfolds in the same manner as with states, the main difference being the explanation for the direct targeting of a company through the initial ‘bypassing’ of the state. Following the argument made above, I include one precondition that may (but does not necessarily) make the operations of a TNC the target of domestic mobilization and international pressure from the transnational advocacy networks. This precondition requires that in any given country the TNC in question operates, a *connection* with, and possible *responsibility* for, human rights violations can be established. As noted above, this responsibility is determined by the specific norms and expectations created by norm entrepreneurs, and the nature of unit-level operations determining which level of responsibility can be ascribed to the company.

Looking at the different phases, in *phase 1* I assume that when bypassing the government, affected stakeholders such as the local community may at the same time start a direct targeting of the TNC perceived as an accessory to the repression, for instance in the case of a joint venture. I also assume that if the company responds with indifference, or even contributes to further repression of affected stakeholders, because it obstructs the company in its operations, these stakeholders bypass the TNC as well. If this takes place after the norm of TNC responsibility has gained influence, it will be likely that transnational advocacy networks start pressuring TNCs directly from ‘above’. The targeting of a company then, may result from what I call a ‘double bypass’, when national opposition seeks to gain support to pressure both the

government and the TNC. Paraphrasing hypothesis 1 of the Spiral Model, it becomes a proposal that only if and when the transnational advocacy network succeeds in gathering sufficient information on the *complicity* of the “*target corporation*” in human rights abuses, can it put the norm-violating corporation on the international agenda moving the situation to phase 2.

In *phase 2*, if TNCs have gained status as legitimate bearers of human rights norms in World Time, the implicated TNC is put on the international agenda of the human rights network and international public attention towards the company is raised. Information about the complicity of the TNC in human rights violations is produced and disseminated by the help of affected stakeholders. Networks might now initiate campaigns of different kinds to pressure the company to terminate their perceived human rights violating behaviour, while continuing to influence the repressive government to do the same. They might lobby the home governments of TNCs or international organizations, to speak out against company practice. Human rights groups will most likely try to damage the company’s reputation and business through activist campaigning, provision of information and shaming. As with states, TNCs complicit in human rights abuses will probably respond with *denial*, especially when operating in a World Time context without an institutionalized responsibility norm. This denial will, I expect, take place by pointing to the norm of state responsibility for human rights implementation, and the economic and ‘neutral’ nature of companies. Also, if TNC operations are threatened by violence against employees and sabotage of equipment, the company might be more likely to gain support among key stakeholders such as investors or consumers. The transition to the third phase primarily depends on the strength and mobilization of the transnational network in conjunction with the vulnerability of the norm-violating *corporation* to international pressures (hypothesis 2).

In *phase 3*, the continuing and intensifying pressure will make the company undertake some cosmetic changes to repair its reputation and gain goodwill. These minor changes may allow other repressed stakeholder groups to gain courage and

space to mount its own campaigns against the TNC. The TNC is at this point acting from an instrumental or strategic position, aiming to recover its flawed reputation. The TNC gradually starts taking ‘reformist’ stakeholders such as human rights organizations, the local community and other affected stakeholders more seriously, further strengthening their case. TNCs may start a ‘controlled liberalization’ by implementing human rights norms in their business principles, or continue partaking in violations, which may result in a change of management. Resulting either from a change of *management* or a revision of *business principles*, this stage in the socialization process marks the transition to “prescriptive status” (hypothesis 3).

In phase 4, the TNC regularly refers to human rights norms when commenting their own and other companies’ behaviour. The idea that companies should respect and promote human rights is no longer controversial, even if the company continues being an accomplice or contributor to human rights violations. Paraphrasing Risse & Sikkink (1999: 29), a *company* will then be considered as accepting the validity of human rights if: 1, it declares support for the UDHR and other significant and relevant declarations and guidelines; 2, the norms are institutionalized in the core *business principles* and/or *corporate rules*; 3, there is some institutionalized mechanism for *stakeholders* to complain about human rights violations; 4, the discursive practices of the *corporation* acknowledges the validity of the human rights norms irrespective of audience, no longer denounces criticism as interference in internal affairs, and engages in a dialogue with its critics.. According to the model, establishing if the company believes in what it says or if they have only instrumental or rhetorical support for human rights is ultimately impossible to establish. What is important is if their words and deeds ultimately match.

In phase 5, TNCs might accept the validity of human rights norms, but still human rights violations may occur in connection with their operations. This might be because they are not in control over the actions of the governments with whom they are operating their ventures, or the security forces safeguarding their facilities. Successful implementation will be influenced by the management structure of the

company, as this determines the locus of authority and direction of communication flows, how policies are evaluated and controlled, and how the incentives structure for facilitating unit-level implementation is organized. It is therefore crucial that the domestic-transnational-international pressure is sustained. Sustainable change in human rights conditions will only be achieved at this stage of the process when *corporate management* is continuously pushed to live up to its claims and when the pressure “from below” and “from above” continues (hypothesis 4). Then the final stage in the socialization process can be reached, where human rights norms are fully institutionalized in the company and norm compliance becomes a habitual practice and is enforced by company rules.

3.3 Methodological Considerations

3.3.1 Approach and Design

Applying this framework, I will look at how Shell has responded to the growing norm of human rights responsibility for TNCs. Choosing TNCs in general, and Shell specifically as a “most likely case for socialization” might be a justifiable design, as the nascent socialization literature in international relations still does not give a good sense of how and under what conditions socialization occurs (see Checkel forthcoming: 4, 26). As has been argued, the TNC’s role and power globally is today increasing and foreign direct investment is liberalized on the one hand, and there is lack of human rights obligations and an increasing expectation that corporations should be responsible for human rights on the other. Further, TNCs are often based in western countries with strong human rights profiles, but operate in countries with poor human rights records. This would make them ideal targets for international human rights organizations.

In this context, I expect that processes of socialization are likely to be at work, and that the recent norms and socialization literature in international relations be a good tool for analysis, as it is sensitive to contextual conditions as well as acknowledging

both the ‘instrumental’ and ‘discursive’ features of an actor’s identity. Following a case study approach is suitable in this context as it is an “empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when...the boundaries between phenomenon and context are not clearly evident”, and the method is used when one deliberately wants to cover contextual conditions crucial to the phenomenon of study (Yin 2003: 13). Further, the explanatory nature of ‘how’ and ‘why’ questions deal with operational links needing to be traced over time, and are likely to lead to the use of case studies (ibid: 6). This implies, as Andersen argues, that case studies may well have a historical form (Andersen 1990b: 123), which is the case in my analysis of Shell.

Shell as a case of analysis will, for several reasons, offer a good opportunity to analyse human rights strategy as a socialization process, and test the propositions of the Spiral Model. *Firstly*, the oil industry, being essentially international in its operations which are determined by geology and markets, and impacting most aspects of life, has long been the archetypal transnational business (Chandler 2000:5). As for Shell, it has in both its ownership and scope, been considered “perhaps the world’s most truly transnational business” (Lawrence 2002: 2). *Secondly*, as early pioneers of globalization, the petroleum industry has often, in collusion with home or host governments, been linked to serious human rights problems (Eide 2000: 28). *Thirdly*, Shell’s experience in the mid-90s has been seen as epitomizing the change and importance of the TNC/human rights question. It initiated a transformation process within Shell and was a key factor in putting the social responsibility and the legitimacy of the oil companies on the top of the public agenda (Tangen, Rudsar & Bergesen 2000: 185; Christian Aid 2004: 6). Hardly any other TNC has been targeted more extensively than Royal Dutch/Shell Group (Frynas 2003: 275), and massive pressure has driven Shell to do more than its counterparts up till now. As Lawrence (2002: 2) states:

“Arguably, Shell is further along the transition to full stakeholder engagement than any other major multinational corporation. The company is of theoretical interest not because it is typical but, on the contrary, precisely because it is not.”

Further, the rationale behind choosing a *single* case approach in this thesis can be explained by justified by two factors. *Firstly*, by choosing Shell – which as a result of its transformation process since the mid-90s has developed a new communicative openness and transparency – a lot of material discussing the company’s identity and increasing social and environmental concerns with unusual frankness will be available (Livesey 2001: 6). Thus, using Shell as a case study would offer an opportunity to investigate the forces taking the company from a reactive, to possibly a proactive human rights strategy, a task which would present even greater difficulties in the case of other TNCs which have had dealings with human rights issues, as reliable information concerning company strategy is hard to obtain (see further considerations on data below). *Secondly*, the explicitly of the Spiral Model’s multiple propositions may also justify a single case approach. Yin (2003: 40) argues that in the case of well formulated theories, if “the theory has specified a clear set of propositions as well as the circumstances within which the propositions are believed to be true...to confirm, challenge or extend the theory, a single case may meet all of the conditions for testing the theory”.

3.3.2 Data

As noted, assessing the strategy of a company means facing some obstacles concerning data. Documentation accounting for the strategy that an oil company has decided to adopt will seldom be accessible to the public. As Tangen, Rudsar & Bergesen (2000: 186-187) suggest, company strategies will therefore have to be analysed empirically on the basis of indicators such as a company’s *vision and image*: how human rights concerns are incorporated in its presented objectives; *organisation and procedures*: the establishment of new forms of organisation, rules and guidelines; and *public positions*: how human rights concerns are reflected in investment patterns and support for humanitarian projects. Further, as the main benchmark for human rights practice in the analysis will be the expectations of human rights organizations and the like, these organizations’ assessment of Shell’s strategy will be important to analyse TNC strategy.

To provide reliable empirical material for background, discussion and analysis, a variety of sources will be consulted, ranging from newspapers, available interviews and scholarly work, reports and public information from human rights organisations, international organizations, investment institutions and Shell, to direct correspondence with the Shell company. As such, “case studies can be based on any mix of quantitative and qualitative evidence, and need not always include direct, detailed observations as a source of evidence” (Yin 2003: 15). The empirical material used for illustration and example in the analysis will focus on Shell from around 1990 to the present. Thus, describing this process demands an assessment of Shell’s human rights approach during this period, and of what have been the decisive elements influencing it, which means acquiring information stretching 10-15 years back in time that is as reliable as possible. To further strengthen the internal validity of the study, data will be collected on as many the theory’s observable implications as possible to better evaluate it (King, Keohane & Verba 1994: 26).

3.3.3 Analysis

As a case study, the findings of my analysis are generalizable to theoretical propositions, not to populations or universes, and the goal is to expand and generalize theories (Yin 1994: 10). As with what Ragin calls variable oriented work, general dimensions of macrosocial variation are posited, and empirical instances are viewed as representations of underlying theoretical concepts or principles. The task then, is to uncover basic patterns of covariation among essential properties (Ragin 1994: 300).

The analytical ambition of this thesis can be seen as threefold. *Firstly*, based on qualitative, empirical information, the study seeks to identify or make probable and test a general holistic understanding of a phenomenon (Andersen 1990a: 77). More specifically the design is a ‘theory-interpreting single case’, as it interprets a case (Shell) in light of existing concepts and theories (socialization, the Spiral Model), where the purpose is to utilize generalizations to enlighten certain events (Andersen 1997: 68). *Secondly*, the case can be seen as implicitly comparative, as it is studied as

a theoretical (socialization) and empirical (TNCs) class or type of phenomena. The comparative aspect thus lies in positioning the study, so that the focus is not only on the unique, and establishing the domain to which the findings can be generalized, realizing the potential *external validity* of the study (Andersen 1997: 70-73; Yin 2003: 37). This positioning is aspired to through the social constructivis foundation, by looking at the factors influencing the strategy of TNCs in general, and the development of a framework for analysis applicable to all TNCs. *Thirdly*, while the theory is used to organize the empirical material – keeping in mind that this material can be portrayed trough different narratives and the understanding of the case is partly a function of the ‘conceptual lens’ used to look at the evidence – the case will also have elements of theory development, as I throughout the analysis consciously look for core variables to sum up the patterns of behaviour and substance of the data (Andersen 1997: 70-73).

For the purpose of analysis, the obvious approach here is the ‘logic model’ technique. This can be considered a form of pattern-matching, which compares an empirically based pattern with a predicted one. It also includes elements of time-series analysis, which examines the relationship of events over time (Yin 2003: 116, 127). The logic model – in this thesis represented by the Spiral Model – stipulates a complex chain of events over time, staged in repeated cause-and-effect patterns where a dependent variable (event) at an earlier stage becomes the independent variable (causal event) for the next stage: an *intervention* may produce *immediate* outcomes, possibly producing *intermediate* outcomes, that might lead to *ultimate* outcomes. (Yin 2003: 127-128). Thus, this technique is useful when multiple stages may exist over an extended period of time, as in the case of the Spiral Model. Comparing empirical evidence with theoretically predicted sequential events, determines whether a pattern match has been made with these events. The analysis will then consist of “tracing the actual events over time, at a minimum giving close attention to their chronological sequence” (ibid: 132), and determining their fit between the pattern of events revealed in the case of Shell, with that predicted by the main propositions of the Spiral Model. Analytically, this will be done by organizing the empirical material

through the Spiral Model and paying attention to the mechanisms at work, both by looking at direct interaction and by inferring causality on the grounds of chronology where this may seem plausible.

A major challenge is that generally “Cause-effect relations can be difficult to assess and virtually impossible to quantify” (Tangen, Rudsar & Bergesen 2000: 194). If the patterns coincide however, the results can help a case study strengthen its internal validity (Yin 2003: 127). As Zadek (2001:20) argues, what distinguishes success from failure is:

“...ensuring a strong empirical orientation towards the analysis. But this alone is not enough...data are inevitably incomplete, and generally contested. Most data are sadly inadequate in helping us to map the chains of cause-and-effect that would help us to understand how the present creates the future. In fact, data do not help unless they are set within a reasonably clear framework that reflects how one sees the world.”

In this thesis, this framework is represented by a firm theoretical positioning within the social constructivist school. However, this does not mean that the analysis will be limited by theoretical constraints, as the analysis will also to some degree consist of theory development and explanation building, where case study data is analyzed by building an explanation about the case. Also a type of pattern-matching, explanation building entails stipulating a presumed set of causal links about a phenomenon, preferably reflecting some theoretically significant propositions, and refining these explanations throughout the analysis (Yin 2003: 120-122).

4. The Case of the Royal Dutch/Shell Company

4.1 Introduction

The Royal Dutch/Shell Group of Companies (hereinafter Shell) has a long history of controversy. Henri Deterding – the head of Royal Dutch Petroleum Company (Royal Dutch) and architect behind the 1907 alliance with Shell Transport and Trading Company plc (Shell TTC) – was sympathetic to Adolf Hitler, and in the late 1930s negotiated with him to supply oil on credit, leading to Deterding's forced retirement and damage to the company's reputation. In the 1970s and 80s, Shell was accused of breaking international oil sanctions against the illegal Rhodesian regime, and criticised for its investments in apartheid South Africa (Frynas 2003: 278; Moldoveanu 1999: 2).

However, these incidents did not have nearly the same repercussions as the criticism Shell faced as a result of its operations in Nigeria, coinciding with the controversy over its plans to dump the Brent Spar buoy in the North Atlantic. This put the company under intense public pressure in the mid 1990s, and led Shell to rethink its ways of doing business. A strategy to better meet society's expectations and concerns over the effects of its operations was implemented, initiating an open-ended transformation process (Frynas 2003: 275; Holliday, Schmidheiny & Watts 2002: 19-21; Tangen 2003: 5; Tangen, Rudsar & Bergesen 2000: 185).

Analyzing Shell's transformation, I will first identify the company properties which are relevant for explaining the process. These include Shell's operations – with a focus on Nigeria – the degree of exposure and vulnerability of the company, and Shell's management and policy orientation. I will then depict the events seen as catalysts for change, presenting them in a chronological order. Organized around the five different phases of the Spiral Model, this account will include an empirical and factual part, and for each phase an assessment of the process by establishing which

events, actors and mechanisms may eventually account for the presumed transformation of Shell's human rights strategy. I will then consider the case as a whole, and evaluate the internal validity of the analysis itself. Finally, I step back to consider the case of Shell and the extension of a social constructivist argument in perspective of the wider TNC community.

4.2 Operational Features

4.2.1 Shell's Operations in the Niger Delta

The Shell Group is among the largest companies in the world. From 1990 to 1995 the World Investment Report ranked it as the top of the 100 largest TNCs in the world by foreign assets, and in 2004 it remained number six (UNCTAD Website 2005.05.25). In 1991 Shell operated in over 130 countries and with revenues of 103 US\$. A major part of these revenues came from production in Niger Delta. Shell, in partnership with BP, became involved in Nigeria in 1937 under the guardianship of British colonial rule, and in 1958 oil was discovered in the Niger Delta. In 1973 the Nigerian government entered the joint venture through the government owned Nigerian National Petroleum Corporation, and has held a controlling interest since 1974. BP's share of the venture was appropriated in 1979, and in 1988 minority stakes were given to Elf and Agip. The Shell Petroleum Development Company (SPDC) operating the joint venture has since 1989 held a 30 per cent equity (Moldoveanu 1999: 2-4).

While Shell had begun production of oil under a democratic regime, tensions in Nigeria led to violent conflicts and after a coup in 1966 Nigeria was mostly led by military governments until the start of democratization in 1998 (Paine 1999a: 5-6). Relevant here are the governments of General Ibrahim Badamosi Babangida (1985-1993) and General Sani Abacha (1993-1998), and the interim transition government of General Abdul-Salami Abubakar (1998-1999) who preceded the democratically elected President Olesgun Obasanjo (1999-present) (see Amadife 1999: 623). After

the government increased its stake in the SPDC and other joint ventures, the economy of Nigeria became extremely dependent on its oil industry. Accounting for 1% of federal government revenue in 1960, it soared to almost 85% in 1990 and has remained at about 95% since 1995 (Economist 2000.01.13). With increasing oil wealth, the country had entered a period of corruption, ostentatious expenditure and oppressive military dictatorship, and was plagued with high crime-rates, extremism and radical movements (Paine 1999a: 4-6; Chandler 2000: 11). Meanwhile, the SPDC venture continued to be the largest oil and gas company in Nigeria, and by the mid-1990s controlled about 60 per cent of Nigeria's known oil reserves (Holliday, Schmidheiny & Watts 2002: 34).

In the Niger Delta, a main cause of conflict had been inter-ethnic conflicts and demands by minority groups for autonomous recognition. However, oil production and unequal distribution of revenues exacerbated the tensions, as the communities of the oil producing areas claimed, and still claim, to have suffered negative social and environmental consequences from the production without gaining any benefits (IBLF 2004:05:23). In the Ogoni region for instance, the exploitation of oil had resulted in environmental degradation to the degree that the local population experienced difficulties growing sufficient food for their own consumption (Skogly 1999: 241).

4.2.2 Exposure and Brand Identity

Some of the structural characteristics of Shell make the company particularly vulnerable to criticism and activist campaigns (Tangen 2003: 4). It presently has over 119,000 employees in over 145 countries (Shell 2004: 6), and the Shell Group comprises a complex network of more than 1000 companies and around 2000 joint ventures. Considerable shares of Shell's production comes from activities in countries known for human rights abuses, such as Nigeria, Congo, Colombia, Oman, and others, involving Shell with some of the worlds most repressing regimes and leaving their upstream activities highly exposed (Tangen 2003: 2-4).

On the other hand, in the home countries of the parent companies of Shell human rights have a strong standing. Royal Dutch based in the Netherlands and the British-based Shell TTC hold the publicly owned shares of two holding companies, Shell Petroleum N.V. and Shell Petroleum Company Limited, who again control the interests of the other Shell Group Companies. Operations are carried out by operating companies assisted by service companies based in the UK and the Netherlands (see Appendix 1 for the structure of Shell). As noted in section 2.3.4, the UK has developed a distinct ‘citizenship culture’ where social indicators and reports and building a new social contract with the public is at the core, and British human rights NGOs in particular are considered to be powerful and well-organized.

Like oil majors such as ExxonMobil and BP, Shell is a vertically integrated oil company operating at all stages of the supply chain, from exploration and production, through transport and refinement, to the marketing of consumer products (Frynas 2003: 277). At the same time, Shell has a monolithic corporate identity, using the same logo and visual style for all its divisions and products, making the parent company instantly recognizable (Brønn 2002: 94-95). The red and yellow Shell emblem – or “Pecten” – remains one of the greatest brand symbols in the 21st century (Shell Website 2005.05.31). This also leaves the company’s downstream activities exposed and vulnerable to consumer sentiments, because consumers who disagree with Shell’s human rights performance or responsiveness to stakeholders can easily boycott Shell gas stations and affect revenues (Tangen 2003: 3; Lawrence 2002:3).

4.2.3 Policy Orientation

The Shell Company has been considered one of the first companies to develop what resembles a *geocentric* culture according to Perlmutter’s typology (Perlmutter 1972; Roberts 1972; Barnes 1972). After reforms in 1959, the chief decision-making body has been the Committee of Managing Directors (CMD), a joint committee of the boards of the holding companies Shell Petroleum N.V. and The Shell Petroleum Company Limited, consisting of five Group Managing Directors including one CMD

chairman. The parent companies, Royal Dutch and Shell TTC appoint directors to the boards. The chairman is powerful, but the decision-making process is consensual in nature, requiring the collaboration of the four other Managing Directors. Thus, unlike many other large TNCs, there is no one person at the top holding executive power (Frynas 2003: 277). The reforms also gave the subsidiaries of Shell more autonomy in their operations, at the expense of the executive power of the CMD chairman (Moldovenau 1999a:2). This decentralized organizational structure has enabled the individual Operating Companies to develop strong national identities and operating procedures, and “It is thus commonly heard that Shell is not one company but many” (Tangen 2003: 2).

Though being one of few companies which had developed a significantly geocentric culture at the beginning of the 70s, the major cultural influence was still that of the parent organization and senior management was predominantly drawn from the countries in which Shell is based. Evidence shows that there has been a reluctance to appoint from outside, and a tendency to maintain the strength of the dominant national groups (Roberts 1972: 122-123). Furthermore, accounting for the success of the Shell Company – even in times of exposure to wealth deprivations due to expropriations, war, currency manipulation etc – the decidedly geocentric attitude of the Shell Group has been pointed to as one possible explanation (Barnes 1972). This geocentrism has been evidenced through a relatively wide distribution of shares, placing different nationalities in the Hague and London headquarters staff, and in developing chief executive officers of foreign affiliates and interchanging them regardless of nationality (ibid: 467). To counter the fragmenting effects of the decentralized structure of Shell and forge cohesion and a ‘group culture’, senior executives are rotated, and working committees include personnel from different operating and service companies. Further, to achieve the use of common principles by the operating companies, there are economic control mechanisms and annual appraisals, and top management are involved with the appointment of the managing directors and board members of the operating companies (Tangen 2003: 2).

As with other large publicly owned companies, shareholders have very little effective power unless dividends and share prices drop to unacceptable levels. The role of shareholders is mostly restricted to ratifying decisions made by the board of directors in advance of the Annual General Meeting (AGM). Possible exceptions are institutional investors such as Barclays Global Investors International, and the Pensions Investment Research Consultants Ltd (PIRC), which may have more leverage through their advisory role and ability to mobilize shareholder resolutions. However, the real centre of power within the Shell Group lies with the top directors of the parent companies, Shell TTC and Royal Dutch, who jointly decide on policy (Frynas 2003: 276; PIRC 1998).

It has been argued that the organizational features of Shell, such as consensual decision-making and a decentralized structure, has contributed to making the company somewhat slower in initiating internal reforms than rivaling oil companies. Shell has been referred to both as ‘slow to change course’ (Boyle 2002: 11) and a ‘dinosaur’ in the industry (Frynas 2003: 277). However, from the 1970s planning was made and programs were introduced to enhance the effectiveness of its organizational learning into the 1990s (Boyle 2002: 13).

Social Policy

In line with its geocentric culture, in the beginning of the 70s the Shell Company developed a distinctive corporate philosophy which it sought to inculcate throughout its organization. The essence of this philosophy was, according to Roberts (1972: 125-126), the view that:

“while the company is primarily concerned with maximising the profitability of the company...the company seeks to promote as an alternative to periodic demands, dramatic confrontations and bouts of bitter conflict, a continuous dialogue between management, workers and unions. In short, it is the objective of the company at all times ‘to conduct its affairs in a socially responsible way.’”

Until its revision in 1997, Shell’s social policy was based on its 1976 Statement of General Business Principles (SGBP). Having only advisory status, it functioned as a

guideline for conducting operations in a ‘responsible’ manner. It states that “The objectives of the Royal Dutch/Shell Group of companies are to engage efficiently, responsibly, and profitably over the long term in the oil, gas, chemicals, coal, metals, and related businesses” (SGBP 1976: 2. Responsibilities, in Paine 1999a: 22-23). Regarding Shell’s responsibilities to society, the principles further states that it is the company’s duty to “...provide products and services in a manner which is in keeping with good citizenship and pays proper regard to safety and to social and environmental standards and needs”. Further, it states how this in Shell’s view is best accomplished:

“Shell companies work in a wide variety of environments over the nature of which they have no power. In general, however, over the long term the community can be served most efficiently in a market economy in which customers...ultimately decide, through the exercise of their individual preferences, from whom they want to buy and what they want to buy. The right of governments to legislate on social and economic matters is undisputable, but under normal circumstances the requirements of the market are best determined by competition with minimum government intervention.” (ibid: 4. The Market Economy).

The principles are based on an ideal to “avoid involvement in politics”. However, they also state that it is the company’s legitimate rights and responsibility to “...speak publicly on matters that affect the interests of employees, customers, and shareholders, and the general interest where they [the Shell companies KH] have a contribution to make that is based on particular knowledge”, though the principles ultimately maintain that “Decisions, and particularly investment decisions, should be based on commercial criteria and not aim at influencing political causes of the pattern of particular societies. The latter are the concern of individual citizens and governments and not of companies.” (ibid: 5. Political Activities).

However, some involvement in activities not based on commercial criteria might be justified: “...the need is recognized to take a constructive interest in social matters not necessarily related to business...for example, through educational assistance or financial donations...” (ibid: 6. Grants and General Community Projects). The concluding paragraph of the SGBP notes that “The importance of the activities in

which Shell company are engaged and their impact on national economies and individuals are well recognized.” (ibid: 8. Information). However, looking at the turmoil that was going to surround Shell from the beginning of the 90s, it may seem that the company itself had not recognized the consequences its impact might have.

4.3 Shell’s Human Rights Strategy as a ‘Spiral Process’

4.3.1 Phase 1: Nigerian Troubles and Activation of Network

In the early 1990s there was an escalation of protests relating to oil production in the Niger Delta. There was an absence of visible government presence in the Delta, with the result that oil companies and Shell in particular, became the focus of discontent and sometimes violent protest. In the Ogoni region, the Ogonis complained about major environmental damage, from oil-spills and other harmful side-effects of oil production caused by Shell. Through the formation of the Movement for the Survival of the Ogoni People (MOSOP), the Ogonis started campaigning for greater shares of oil revenues, political autonomy and ownership of the oil beneath their land (Frynas 2003: 279; IBLF 2004:05:23).

These antagonisms in the Niger Delta led to violent confrontations between the local ethnic minorities, who accused Shell of damaging their environment and their culture, and the Nigerian security forces who had orders to protect oil installations (Le Monde diplomatique 2000:12:08). To protect their people and facilities, Shell and other companies operating in Nigeria relied on special members of the country’s regular police force known as ‘supernumerary police’. The companies employing these supernumeraries could impose their own rules of engagement for dealing with conflicts and were responsible for paying, training, and equipping the police assigned to their facilities, including providing them with arms if necessary (Moldoveanu 1999: 5).

For the Ogonis, the underlying problems of economic and social rights became problems of civil and political rights. People living in the Niger Delta experienced that their right to association and freedom of expression was violated by the Nigerian security forces through brutality, unlawful detention and unfair trial (IBLF 2004:05:23; Skogly 1999: 241-243). A particularly unsettling incident occurred at a Shell facility at Umuechem in October 1990, when 80 unarmed demonstrators were killed and hundreds of houses burned by the paramilitary Mobile Police Force, bringing the situation in the Niger Delta to international attention (IBLF 2004:05:23; Tangen, Rudsar & Bergesen 2000: 188). According to an Amnesty International⁸ report, Shell had called in the Mobile Police to protect its installations and personnel (Amnesty International 1996: 18).

MOSOP accused Shell of contributing to the violence of the security forces through its collaboration with the Nigerian government (IBLF 2004:05:23). Further, the MOSOP had laid down the claims of the Ogoni people in the 1990 'Ogoni Bill of Rights', directed to the Nigerian government. However, when the government refused to grant MOSOP leaders and audience to discuss their Bill of Rights, an appeal to the international community calling for compensation for harm done by Shell and other companies was added in 1991. In 1992, Shell received a letter from MOSOP demanding 6 billion US\$ for damages caused by its operations in Ogoniland, and 4 billion US\$ for revenues the Ogonis perceived to be rightfully theirs (Moldoveanu 1999:10-11).

At this time, Ken Saro-Wiwa – MOSOP founder and acknowledged author – was emerging as a key leader and spokesperson for the Ogoni. In January 1993, he organized a massive peaceful protest march against the Nigerian Government and the SPDC, where as many as 300,000 people (the Ogonis constitute about 500,000 people) participated. Saro-Wiwa called the operations of Shell genocide and systematic extermination, and called on the Ogoni to fight for their rights. This

⁸ Amnesty International is a worldwide movement campaigning for internationally recognized human rights, comprising over 1.8 million people in over 150 countries (Amnesty International Website 2005.06.02).

protest attracted further international attention to the MOSOP cause, making it an international issue, and enabled Saro-Wiwa mobilise international NGOs to make the situation of the Ogonis known in the West (Le Monde diplomatique 2000:12:08; Moldovenau 1999a: 10; Frynas 2003: 279). As Philip Watts later describes in a letter to PIRC (1996:8):

“During the period of 1991-93, there was a distinct evolution in MOSOP’s approach...the focus of the campaign shifted to emphasise demands for environmental compensation, targeted explicitly at Shell – presumably in a bid to raise the international profile of the issue. There was also a hardening of approach with some sections of MOSOP’s leadership tending towards direct confrontation with the oil companies...”

In early 1993, violence against SPDC field staff in the Niger Delta started to become a major problem. Hostage-taking of oil workers and kidnappings increased in the area, and SPDC vehicles were being seized. Thus, Shell needed to provide security for its employees and protect oil infrastructure, a service provided by the state’s security forces. Meanwhile, Saro-Wiwa continued organizing mass protests against Shell, and faced with increasing intimidation the SPDC eventually declared Ogoniland a ‘no-go’ area, withdrawing all staff and supernumerary police assigned to Shell’s facilities from the area (IBLF 2004:05:23; Frynas 2003: 279; Moldovoneau 1999a: 11).

SPDC continued pumping oil until April, when the pressure forced Shell to stop production. The same month the MOSOP staged mass demonstrations to stop the construction of a major trunk line passing through Ogoniland (Moldovenau 1999a: 11). To be able to resume production, General Sani Abacha’s government carried out a campaign of brutal repression. Hundreds of Ogoni were arrested, imprisoned and sometimes summarily executed in spite of international protests and outrage (Le Monde diplomatique 2000:12:08). This was by some seen as further evidence of complicity between powerful oil interests and the military government, and contributed to heighten the tensions among MOSOP, SPDC, and the Nigerian government (Moldovenau 1999a: 11).

Though Shell had been facing increasing criticism from environmental and human rights groups since 1990 over the environmental impacts of SPDC and its alleged collusion with the military authorities, the event that ultimately contributed to concentrate attention on Shell and put the company on top of the international agenda, was the arrest in May 1994 of Saro-Wiwa and fourteen others. They were jailed on charges of inciting the murders of four Ogoni chiefs. Shortly after Saro-Wiwa's arrest, Amnesty International issued an appeal on his behalf, expressing the belief that the charges against him were unfounded (PIRC 1998: 4; Moldoveanu 1999: 12).

As the trials went ahead, Shell was contacted on several occasions about its opinion. Saro-Wiwa believed the trial was rigged in order to find him guilty. Several flaws in the proceedings were discovered by a lawyer observing the trial on behalf of a human rights group, and there were reports of the government bribing witnesses to give false testimony. Shell now came under increasing pressure as the media, Ogoni supporters and human rights groups expected the company to speak out publicly against what was happening (Moldovenau 1999a: 12-13).

Assessment

The departure point of the Shell case as portrayed here is the beginning of the 1990s. At this time, norm entrepreneurs within Amnesty International and other NGOs had just started discussing how to make companies use their influence in defence of human rights. The norm of corporate human rights responsibility was still immature and underdeveloped, and at the international level the responsibility for the promotion and protection of human rights continued to be placed on states. Meanwhile, the unrest and troubles in Nigeria that were going to put Shell on top of the global human rights agenda were culminating, while the forces of globalization were making communication and the spread of information ever more immediate. Human rights organizations were establishing business-units and working out strategies for how to approach the business community, while at the same time deriving advantage from the new opportunities of the information society.

The Umuechem massacre and other extrajudicial arrests and executions, and the environmental deterioration of the local community, showed clear disregard for several articles of the UDHR (1948: notably Articles, 3, 5, 6, 7, 9, 10, 11, 19, 20.1 and 25). These human rights violations could – as human rights organizations eventually framed the human rights norm for companies to ascribe more of responsibility to companies – be seen as having direct connection with Shell's operations. The environmental degradation in the Delta was a consequence of oil-spills from SPDC operated facilities. Further, the SPDC venture is a joint venture with the Nigerian government, which not only provided security for Shell installations, but also evidently did so in Umuechem and on other occasions on the specific request of Shell. This meets the prerequisite of establishing a potential connection with and responsibility for the human rights abuses committed. (The perceived special responsibility of companies in the case of joint ventures was also noted by Shell (1998c: 39) in its first social report.)

However, at this time Amnesty and other human rights organizations had not yet started targeting the company directly as the corporate human rights norm determining corporate responsibility, including relevant security issues, was yet to be developed, and information on corporate complicity was yet to be collected. In line with the original Spiral Model, it seems that it was the domestic social mobilization of the MOSOP which was initially instrumental in awakening the attention of the international community. When MOSOP's appeal to the Nigerian government to recognize their claims proved futile, the first 'boomerang-throw' bypassing the government not only aimed to seek the support of the international community against the Nigerian state, but also served to target Shell directly from below. As Shell was unwilling change its approach or to pay the Ogonis compensation for damages caused by its operations in Ogoniland, a second 'boomerang-throw' bypassed Shell as well. As a result of what I called a 'double-bypass' where national opposition bypasses both government and company to incite international support, the pressure on Shell both from below and above was escalating.

Though Shell had been identified as having distinct geocentric features and claimed to be conducting their operations in a socially responsible way, this was in a context where the guiding star concerning human rights protection and promotion, was the paradigm of state responsibility. This left human rights, at most, as a vague issue in Shell's social policy, and in Nigeria Shell adhered to the country standards of General Sani Abacha's repressive regime. Further, Shell's position at the onset of events, evidenced in their 1976 SGBP, was clearly a firm belief in consumer choice and market mechanisms as an indicator of stakeholder satisfaction with value orientation and general performance. It can be argued however, that prior to 1990 information on the global operations of a company was harder to come by for consumers around the world than is the case today, making consumer choices far from informed and based on the company's own reporting. Thus, most consumers would be unaware of decades of environmental degradation and involvement with repressive regimes in the Niger Delta.

As the MOSOP intensified their campaigns during 1993, norm entrepreneurs were continuously developing their TNC human rights approach. Further incidents of brutal repression by Nigerian security forces contributed to MOSOP's antagonism against Shell, and when Saro-Wiwa was arrested in 1994, it seems that this was the 'triggering' incident predicted by the model to launch the situation into the international sphere. At this time, the transnational advocacy network had gathered sufficient information on Shell's complicity in human rights abuses to put the company on the international agenda. A structure in the form of a transnational advocacy network was now emerging, pressuring Shell simultaneously from 'above' and 'below', as Amnesty and several other organizations together with MOSOP appealed in to Shell to speak out, while the media covered the unfolding of events.

4.3.2 Phase 2: Denial and Non-Interference

Several INGOs had contacted Shell over its role in Nigeria, and a campaign for the release of Saro-Wiwa was mounted by a number of human rights and environmental

groups such as the Ecumenical Council for Corporate Responsibility (ECCR),⁹ Amnesty International, Greenpeace¹⁰, and Human Rights Watch¹¹ (PIRC 1998: 8; Chandler 2000: 8-9). Furthermore, the investment consultants at Pensions Investment Research Consultants Ltd (PIRC) raised concerns over Nigeria in its corporate governance report for Shell's 1995 AGM (PIRC 1998: 4).

The early attempts of the AIUK Business Group to establish a human rights dialogue with Shell was met with the reply that it believed it had no legitimate role to play:

“As a commercial enterprise we cannot get involved in judgements and actions about human rights which we strongly believe is clearly the domain of governments and intergovernmental organizations and not of business.” (A. J. C. Grak, Group Public Affairs Co-ordinator, Shell International Petroleum Company, 1995, quoted in Chandler 2000: 9-10).

Regarding Saro-Wiwa's arrest, Shell made the point that it was an internal affair in Nigerian politics and refused to intervene (Tangen, Rudsar & Bergesen 2000: 187).

In a response to Human Rights Watch, Shell stated:

“You have called Shell to get involved in, and to take a public stance on, several issues arising from the current situation – all of which are political. They are clearly issues where we as a commercial organization have neither the right nor competence to get involved, and they must be addressed by the people of Nigeria and their government.” (ibid; Human Rights Watch 1999: 161)

Except a statement that the defendants were entitled to a fair trial, medical treatment and lawyers of their own choosing, Shell made no public statements as attempting to influence the proceedings was seen as inconsistent with Shell's Business Principles (Moldovenau 1999a: 13), though the principles contained a statement that it was the

⁹ The ECCR is an organization seeking to foster corporate responsibility within British-based TNCs, and the churches and the church related and religious organisations which invest in them (ECCR Website 2005.05.25).

¹⁰ Greenpeace is a global organization working to protect the earth's environment and biodiversity in 40 countries worldwide (Greenpeace Website 2005.06.02).

¹¹ Human Rights Watch is a US-based organization working to promote human rights worldwide (Human Right Watch Website 2005.06.02).

company's legitimate right and responsibility to speak publicly on matters that affect the general interest (see 4.3). Shell's silence was consistent with that of the other big oil companies operating in Nigeria, such as Mobil, Chevron, Elf and AGIP, neither of which took a public position on these human rights issues (Chandler 2000: 13; Moldovenau 1999a: 13).

In the middle the troubles in Nigeria, another event that further amplified the spotlight on Shell occurred in another part of the world. Shell had made plans to sink the decommissioned storage buoy 'Brent Spar' in the North Atlantic. On 30 April 1995, Greenpeace activists boarded the Brent Spar. Public protest escalated, being strongest in Germany where petrol sales dropped by up to 50 per cent during the week of media coverage. There were even incidents of bombing and shooting at some of the German stations. The result was that on 20 June 1995, Shell reversed its decision on to sink the Brent Spar (Frynas 2003: 278-279; Wei-Skillern 2003: 2; Moldoveanu 1999: 3)

On 31 October 1995, Saro-Wiwa and was found guilty as charged and received a death sentence by a Nigerian military tribunal. This contributed to intensify the calls for Shell to intervene, and Shell's initial statements of non-intervention had also served to increase the pressure put on the company (Moldovenau 1999a: 12).

Assessment

The initial response of Shell was, as is predicted by the model, one of denial in line with a reactionary strategy. The statements of Shell executives leave little doubt about their view of human rights issues as a matter for states and international organizations, and a refusal of the legitimacy of the suggestion that business is subject to such norms. However, in line with the model, Shell's need to deny charges suggests that the company was at least implicitly aware that it faced a problem in terms of its international reputation. A factor that might have contributed to Shell's initial silence was that none of the other big oil companies were taking a public position. As the norm of TNC responsibility to protect and promote human

rights was still not established and accepted internationally, none of the other companies operating in the Niger Delta, had integrated it into their strategy. Thus, a situation of shaming and the creation of ‘in-groups’ and ‘out-groups’ among the corporate community, did not occur. As Chandler (2000: 13) notes:

“In Nigeria, Mobil, Chevron, Elf and AGIP had all kept their heads down under the Abacha dictatorship, declining to join an industry front even of private protest which would, even if unavailing, have been more influential than the efforts of a single company.”

On the other hand, the transnational network was gaining strength with the inclusion of new actors such as investment consultants, and there was a production and dissemination of information on Shell operations. Being vulnerable to international pressures and consumer sentiments because it markets a well-known global brand, Shell was not left with much leeway when the Brent Spar issue detonated just before Saro-Wiwa was sentenced to death, as its upstream activities in Nigeria threatened to further damage its downstream market.

At this time, the norm that companies should TNCs should be responsible for promoting the rights of the UDHR if government fails to do so, was established within the NGO community and was gaining influence. As an Amnesty International (1996: 18) report states:

“In its approaches in recent years to Shell and other transnational companies with significant investments in Nigeria, Amnesty International has appealed to them to acknowledge their responsibility to uphold human rights under the UDHR... Furthermore, transnational companies have also been asked to encourage the Nigerian government to improve and extend human rights training for law enforcement officials and to support those in Nigeria working to defend human rights.”

Apart from the fact that Saro-Wiwa was a renowned Nigerian public figure and community leader, the success of the transnational network in mobilizing against Shell on the premise that the company was responsible for human rights issues, may also be due to the nature of the Saro-Wiwa issue. It can be seen as belonging to the category of issues involving bodily harm to a vulnerable individual, where the causal

chain assigning responsibility to Shell was reasonably short and clear. This would according to the research on norms influence presented above, make successful mobilization around this issue likely. Thus, at this particular moment, Shell was in a situation where it was extremely vulnerable to international pressures, following negative publicity over its operations from Nigeria to the North Sea. The ‘death of distance’ concerning communication and the spread of information as discussed above was becoming a harsh reality for Shell: “We discovered there are no more ‘local’ issues anymore” (Tom Delfgauw, former Shell International Manager of the Social and Accountability Team, quoted in Holliday, Schmidheiny & Watts 2002: 21).

4.3.3 Phase 3: Tactical Concessions and Reality-Check

Realising that the company was facing a new public relations disaster shortly after the Brent Spar incident, Shell now made a public statement expressing sympathy for the families of Saro-Wiwa, his eight co-defendants and to the families of the murdered Ogoni chiefs. The statement also reiterated Shell’s position not to interfere in the legal proceedings of a sovereign state, while at the same time pointing out that Shell was spending considerable money on community projects (Moldovenau 1999b: 1, 3).

However, on 8 November 1995 Shell announced that Shell’s CMD chairman at the time, Cor Herkströter, had privately sent a letter to General Abacha calling for mercy for Saro-Wiwa and his co-defendants on humanitarian grounds. Furthermore, Brian Anderson, then managing director of SPDC, held a press conference in Lagos where he also called for clemency, with the result that Nigeria’s Minister of Oil refused to have further contact with him (Moldovenau 1999b: 1; PIRC 1996: 10).

Despite this, Saro-Wiwa and the other eight Ogoni leaders were executed by hanging on November 10, 1995. This galvanised the international human rights organizations’ support for the Ogoni cause and led to major exposure and condemnation of Shell’s policies and practices in international media. It also led NGOs to call for an international boycott of Shell products (Frynas 2003: 279; IBLF 2004:05:23). The

pressure was maintained by an expanding range of groups, from environmentalists, human rights activists, churches and religious organizations, to institutional shareholders who called for reforms of the company's corporate governance (Lawrence 2002: 3). Making matters worse for Shell, the apparent success of the MOSOP in gaining international sympathy had led other ethnic minorities in Nigeria's oil producing areas to start imitating the Ogoni tactics by disrupting oil activities (Frynas 2003: 279).

Shell continued to counter criticism, claiming that it had done all it could through its preferred method of quiet diplomacy (Amnesty International 1996: 18). Newspaper advertisements Shell ran in Europe blamed Saro-Wiwa's execution on protesters, and read:

"First did discreet diplomacy fail? Perhaps we should ask instead why the worldwide protests failed. Our experience suggests that quiet diplomacy offered the very best hope for Ken Saro-Wiwa. But as worldwide threats and protests increased, the Government position appeared to harden." (PIRC 1996: 10)

At the time of the Saro-Wiwa and Brent Spar, several newspapers in the US refused to run Amnesty International ads addressing the incidents, because they did not want to offend a major advertiser and a company that was seen as a 'good corporate citizen' in their local community. Shell also brought journalists to Nigeria to convince them that Shell doing good and counter the accusations made by INGOs such as Amnesty (Russell 2002: 411). Moreover, in addition to providing increased financial investment in Nigeria, Human Rights Watch accused Shell of providing a diplomatic public relations shield for the Nigerian government both before and after the execution of Saro-Wiwa (Human Rights Watch Website 2005:05:24).

However, the intense pressure put on Shell led to subsequent self-criticism, admitting that the company was unprepared for the public reactions to the Brent Spar and Saro-Wiwa incidents, that Shell did not fully comprehend the consequences of its actions, and that management had focused too much on facts and too little on presentation of arguments (Tangen, Rudsar & Bergesen 2000: 186-189). Shell also later gave

‘qualified confirmation’ on importing arms into Nigeria, admitting that it imported handguns for the supernumerary police in 1981, and that it had been ‘forced’ to pay the Nigerian security forces directly on at least one occasion in 1993 (Russell 2003: 414; PIRC 1996: 8; *Le Monde diplomatique* 2000:12:08).

Shell had concluded that its reputation was a core commercial asset which was at risk of becoming even more stained, and that it was necessary to better meet society’s expectations (Lawrence 2002: 8). Neither of the 1995 incidents did lasting damage to the company’s share price or sales, although Brent Spar brought a brief dip in Shell’s market share in Germany because of a consumer boycott (Wei-Skillern 2003: 2). But, as Robin Aram, head of Shell International’s External Relations at the time explains, “we weren’t confident that there would be no long-term impact, given the growing interest of the investment community in these softer issues” and there was a “sense of deep discomfort from our own people” (*Economist* 2000:04:20; see PIRC 1998, Appendix 4).

Dialogue and Support of the UDHR

In the wake of Saro-Wiwa’s execution, several NGOs independently approached Shell to express concerns over company actions in Nigeria, including Pax Christi International¹², and branches of Amnesty International in both the UK and the Netherlands. CMD Chairman Herkströter responded by inviting the NGOs to engage in further discussion, indicating that Shell was prepared to review its business principles. Pursuing the same agenda, Amnesty International and Pax Christi decided to draft a joint memorandum to Shell (Lawrence 2002: 4). Moreover, the recent events had increasingly led Shell to enter a ‘listening’ mode (Holliday, Schmidheiny & Watts 2002:19-21). Subsequently, on 30 January 1996, Shell issued a statement in which it said that it recognized and supported the UDHR (Amnesty International 1996: 18).

¹² Pax Christi is a catholic lay organization devoted to promoting world peace, human rights and economic justice (Lawrence 2002:4).

Over the following three years, Amnesty and Pax Christi engaged in an ongoing private and public dialogue with Shell, and unlike protest it offered the NGOs an opportunity to engage Shell “in an extended discussion of specific actions they might take to improve their human rights records” (Lawrence 2002: 5). In their dialogue with Shell, Amnesty and Pax Christi criticised the vagueness of its Business Principles and encouraged the company to revise them to incorporate explicit support for the UDHR. They recommended that Shell should appoint a director for human rights and carry out independent auditing of its human rights practices. The discussion also focused on the situation in Nigeria, including Shell’s security practices, its relationship to the military authorities, and its role during and after Saro-Wiwa’s trial (ibid: 6).

Other actors also urged Shell to support the UDHR and revise its Business Principles. PIRC, who had been consulting with involved NGOs such as the ECCR and Amnesty (PIRC 1998: 8), issued a report in March 1996 to its clients concerning Shell’s involvement in Nigeria, concluding that:

“...Shell’s stated policy of political non-interference appears to have been overtaken by events. In Nigeria, it has sought to exercise influence on issues which may be seen as part of the political arena in various ways, albeit with a low profile...as the controversy has unfolded, its public stance has appeared to become more sympathetic to opponents of the Nigerian government. Both of these conclusions indicate that Shell’s Statement of General Business Principles in need of review.”
(PIRC 1996: 10)

As Lawrence argues, the dialogue offered Shell with possibility and potential benefits of learning about society’s expectations, drawing on outside expertise, think of new solutions and achieve stakeholder support for implementing them. The dialogue also had the potential of disarm and neutralise dangerous critics and improve its reputation for taking constructive action (Lawrence 2002: 5). According to Robin Aram, “If you anticipate, and you get into dialogue...you’ll get closer to your customers, and indeed your business will do better” (quoted in Lawrence 2002: 5).

Organizational Reform with a Twist

If the Saro-Wiwa and Brent Spar had not been sufficient catalysts for change, further accidental circumstances contributed to facilitate the company's transformation process. Coincidentally, Shell had already in 1994 – before the campaigns against the company erupted – initiated a reform of its organisational structure, to improve financial performance (Lawrence 2002: 3). CMD chairman, Cor Herkströter based need for reform the argument that Shell had become “bureaucratic, inward looking, complacent, self-satisfied, arrogant...technocratic and insufficiently entrepreneurial” (Moldoveanu 1999: 2).

As Shell initiated its intended organisational reform, the emerging external pressures on the company contributed to shift focus from the issue of financial performance, to issues of company reputation and stakeholder relations (Lawrence 2002: 3). Shell now set up a working group called “Society's Changing Expectations” to develop a deeper understanding of its reputation, especially among external shareholders (Paine 1999a: 5). During 1996, the team worked with consultants on designing a process through which Shell employees around the world could engage with one another and with outsiders to develop a better understanding of what society expected of companies like Shell. Meanwhile, the report of the consultant firm found that Shell was perceived to generally be out of step with society's expectations in several important areas: “The reason for the mismatch...appears to be, very largely, that society's expectations have moved on, whereas Shell has not” (ibid: 6).

The result of the dialogues with NGOs and consultant companies, concluding that Shell was out of touch with the expectations of different groups of stakeholders, was that Shell in 1996 started a massive multi-stakeholder engagement exercise, with a key objective to update Shell's Business Principles. Shell started the process by engaging in dialogues with various stakeholder groups in 14 countries, including a wide range of NGOs, academics, local community leaders, and government bodies, through a series of 20 roundtable discussions. (Wei-Skillern 2003: 3). This was followed by a large-scale consultative process involving over 7,500 members of the general public in 10 countries, 1300 opinion leaders in 25 countries, and 600 Shell

employees in 55 countries. The results of this survey showed that 50 per cent of the general public and opinion leaders had a favourable view of Shell. However, apart from the 40 per cent who were neutral, a significant 10 per cent minority believed that Shell lacked care for the environment and human rights (Shell 1998c: 2).

Revision of Business Principles

In 1996, Shell also engaged with a range of stakeholders such as Amnesty International and Human Rights Watch regarding the security aspects of their Nigerian operations, which led to a revision of Shell's rules of engagement with the state security forces to accommodate the UN Basic Principles on the Use of Force and Firearms and the UN Code of Conduct for Law Enforcement Officials (IBLF 2004.05.23). At the same time Amnesty urged Shell executives to include a declaration of the Group's support for the UDHR and all relevant ILO conventions when revising the Business Principles. However, some of Shell's legal advisers felt that some limiting language was necessary. Without it, Shell might find itself under pressure to address human rights issues over which it had no influence or control. Others cautioned against any association whatsoever between Shell and human rights, citing litigation and liability risks. Others still, feared that an endorsement of human rights could damage Shell's business in countries like China and Saudi Arabia where human rights was a politically loaded and highly provocative term (Paine 1999a: 7-9).

During the work at reviewing the Business Principles the external affairs group began to consider implementation and assurance processes. They identified a need for a unified approach that linked fundamental values to operating principles and ultimately to implementable policies and procedures. Business Principles had traditionally been advisory. Now, Philip Watts, new Director of Planning, Environment & External Affairs of Shell International, determined that the Business Principles and health safety and environment (HSE) policies should have mandatory status and that the implementation of all mandatory standards should be assured through a unified process (Paine 1999a: 1, 8).

As the review process proceeded, Shell was constantly put under pressure from different actors. Just before the 1997 AGM of Shell TTC, company directors received an unexpected notice of a shareholder resolution organized by PIRC in alliance with ECCR. (Paine 1999a: 9). The resolution called on Shell to, among other things, designate the responsibility for implementation of environmental and corporate responsibility to a named member of the CMD, establish sufficient internal procedures for their implementation and monitoring and establish an independent external review and audit procedure for these policies, while reporting regularly to shareholders on their implementation. At the same meeting, Amnesty International also called for independent auditing of Shell's Nigerian operations and for an immediate implementation of human rights training for its security staff (PIRC 1997). The background for the resolution was that Shell in its review process had presented few details on its progress. Though the resolution was defeated, it resulted in enhanced listening and communication when it came to shareholders. Wouter de Vries, the Group head of investor relations at the time, commented that "We changed our investor relations programs and became more approachable and proactive" (Paine 1999a: 10-11).

In crafting the new Business principles, Shell took a number of actions recommended by the NGOs. Though it did not include an explicit reference to the UDHR, the 1997 principles stated that one of Shell's responsibilities to society was to "express support for fundamental human rights in line with the legitimate role of business...and contribute to sustainable development" (Shell 1997). The principles also stated that the "Shell companies...have the right to make their position known on matters affecting the community, where they have a contribution to make" (ibid), which was more or less a mere reformulation of the Business Principles that had left Shell silent during Saro-Wiwa's trial, though it did now explicitly express concerns for the community.

Assessment

With the execution of Saro-Wiwa, the international pressure escalated. As the model proposes, at this phase the denial and non-interference the policy of Shell was garnished to counter criticism. Through a more cautious strategy, public statements and ‘quiet diplomacy’ to reverse the sentence were used to manage and counter the disapproval Shell was subject to. While it seems that Shell’s reputation was now particularly vulnerable to criticism, the Nigerian government on the other hand did not respond to this pressure, and went ahead with the execution of the nine Ogoni leaders. The response from the transnational network was instant, and despite the decapitation of the MOSOP, this empowered other ethnic minorities in the Delta to mount their own campaigns against the company. As predicted by the model, Shell’s initial concessions were marked by rhetorical action, where justifications are meant to further one’s interests without challenging the validity claims inherent in these interests, as the company continued justifying their ‘quiet diplomacy’ as the most suitable strategy to handle these issues. Shell’s insistence that it was improper for the company to try to intervene was not in line with the emerging expectation that was ascribing TNCs with a legitimate responsibility to promote human rights. However, as Chandler (2000: 9) argues:

“It might be true to suggest that had Shell responded more constructively it might have avoided the worst impact of the 1995 Nigerian disaster on its reputation. But it would still be presumptuous, since AI [Amnesty International KH] on its part had still to work out practical policy suggestions for companies to adopt.”

Shell’s swift statement of support for UDHR, may also indicate a tactical concession made by a company in crisis. However, this rhetoric of presumably good intentions was not enough to counter criticism. Following the evolution of the human rights norm for companies laid down, it seems that the norm life cycle of TNC responsibility and the process leading Shell to assume a greater responsibility for human rights were now closely co-evolving, as NGOs were framing the norm at the same time as they were targeting Shell.

Initially, NGOs had been targeting Shell through ‘civil regulation’ mechanisms, relying on the importance of company reputation and the utility maximization and cost/benefit calculations of TNCs. As Shell soon recovered from the damage to share prices and sales, Robin Aram’s statement that Shell was unsure about the long-term impact implies that the company’s response to these campaigns resulted from an over-estimation of the financial significance of reputation (identified in 2.2.3 as the ‘Korten effect’). However, as Shell had started making some tactical concessions they had also realized that they were not living up to the expectations of significant sections of society and their own people.

Of course, instrumental considerations continued to be a major influence on Shell’s strategy, as the company anticipated that their stakeholder dialogue would bring them closer to their customers and have a positive impact on business performance. It is clear however, that the dialogue that came to pass following Saro-Wiwa and Brent Spar, did not leave Shell in a mode where the company could just pursue business as usual. The massive conferring with a wide spectrum of key stakeholders commencing in 1996, gives a strong indication that Shell was now taking their NGO counterparts, and other external stakeholders, more seriously. Further, the discussions with Amnesty International and Human Rights Watch regarding the security aspects of Nigerian operations - leading to a revision of Shell’s rules of engagement – is also a signal that the company was now beginning to move towards engagement in a true dialogue with a wide range of stakeholders about how to improve the human rights situation. This move towards argumentative rationality indicative of this phase of the Spiral Model, seems to have left Shell at the point of no return and, it seems, entrapped in argumentative behaviour.

For Shell, this entrapment through its public support for human rights principles involved risk of public failure, loss of control and raising expectations too high (Lawrence 2002: 5). As an officer of Pax Christi put it:

“The moment you make a promise you will be attacked ten times harder: that is their [the company’s] fear. They fear they will be attacked ten times harder when they promise something and do not do it, then when they have the same behaviour but have never spoken out that they will not do it.” (Egbert Wesselink, quoted in Lawrence 2002: 5)

In addition to the urgency felt by Shell in its current situation, another factor that might have contributed to facilitate dialogue was the fact that Geoffrey Chandler, a former Shell executive who had been instrumental in drafting Shell’s first Statement of General Business Principles, was now chairing the AIUK Business Group. This might potentially have contributed to the ‘cultural affinity’ between the parties. As Chandler notes “...protest raises an issue, [but]...it cannot win the argument. You can only win the argument by engagement and discussion” (Lawrence 2002: 5). As seen above, Shell was also kept under constant pressure from, and was in a continuous dialogue with, the transnational network while it was in the process of revising their business principles. In line with the model, this ‘controlled liberalization’ led to the inclusion of support for fundamental human rights in Shell’s SGBPs.

4.3.4 Phase 4: Prescriptive Status

Having declared support for the UDHR and revised its business principles to include the support of fundamental human rights, Shell published its first annual social report, *‘Profit and Principles – does there have to be a choice?’* in April 1998. The report was organized around the revised Business Principles, and described how Shell intended to integrate social responsibility into its overall business strategy. The report was heavy with rhetoric about values, and the indivisibility of principles and profit (Shell 1998c). The report also included a ‘Road Map’ which indicated a commitment and timetable for integrated reporting of economic, environmental and social aspects of Shell’s performance, which according to the Map was to be in place by 2002 (Shell 1998c: 49-51; Chandler 2000: 11). The 1998 Shell (1998c: 38) report stated that:

“We are very concerned by the human rights issues associated with politically sensitive regions. We support the Universal Declaration of Human Rights...and all our actions are based on our Business Principles...Our commitments are to the communities and nations in which we operate, not just the government of the day.”

It further emphasized the collaboration with human rights NGOs. With bold letters, Shell (ibid: 33) cites a Pax Christi/Amnesty International correspondence stating that:

“Pax Christi and Amnesty International wish to ...express their appreciation of the pioneering role that Shell is fulfilling in recognizing that multinational corporations bear responsibility in the field of human rights.”

Keeping the Dialogue Going

Shell also continued to strengthen the stakeholder dialogue and review process initiated in 1996. The dialogue with human rights organizations like Pax Christi and Amnesty International continued, and by providing ‘Tell Shell’ reply cards in their reports and ‘Tell Shell Forum’ website resources at www.shell.com/tellshell for the public to contact Shell, the company introduced venues for stakeholders to express their views and concerns (Shell 1998c; Tangen 2003: 8). The reason for this was partly to strengthen the capability of Shell to stay in touch with the public mood:

“Our industry has to become as good as the NGOs at listening to the public, at understanding and taking into account their underlying fears and concerns, and at explaining our case with persuasive imagery in an acceptable and media friendly manner” (Managing director John Jennings, quoted in Tangen Rudsar & Bergesen 2000: 189).

CMD chairman Mark Moody-Stuart similarly expressed that: “We have learned the hard way that we must listen, engage and respond to our stakeholder groups” (Frynas 2003: 280). Mark Moody-Stuart had succeeded Herkströter as CMD Chairman 1 July 1998 (Shell 1998b). Moody-Stuart has by some been credited as the man responsible for the intellectual framing in 1996 of a new mind-set that paid greater attention to social expectations. Moody-Stuart, then a managing director of the Shell TCC, like Herkströter blamed Shell’s blinding to the outside world of human rights activists and public expectations on a technical mindset and rational logical approach. Moody-

Stuart further argued that Shell's internal and technical focus caused it to miss opportunities and a new reality, and that needs stretched beyond a structural change in the organisation, necessitating a new Shell (Lawrence 2002: 3-4). Moody-Stuart had a firm belief that social and commercial obligations were fundamentally integrated:

"You can't divorce the two. People sometimes try to do that. They say, all this societal stuff is woolly, we should stick to commerce. The two are absolutely linked...The soft issues are really business issues, because we are part of society, and members of society are our customers. So, our impact on society really matters commercially."
(quoted in Lawrence 2002: 4)

Following Up the New Business Principles

To provide implementation of the new Business Principles through procedures and rules, a Social Responsibility Committee had been created at the board level in 1997. The task of the committee has been to make sure that the policies and operations of Shell companies are in line with the principles, as well as major issues of public concern (Shell 1998c: 6; Tangen, Rudsar & Bergesen 2000: 191-192; Wei-Skillern 2003: 3). Shell also developed a Sustainable Development Management Framework explaining how to introduce sustainable practices into the businesses, and Key Performance Indicators (KPIs) to monitor performance of the Group's commitments (Wei-Skillern 2003: 4). Further, the 1998 Shell Report introduced an annual 'Business Principles letter', which every Country Chairman must provide to Shell. This letter is designed to confirm that the necessary procedures are followed to make sure the 'spirit' of the Business Principles is understood by employees, and that they are being implemented (Shell 1998c: 7). Further, Shell conducts a screening of suppliers for their ability to meet HSE standards, and the human rights of their employees, and the company says it will not work with contractors who fail to meet their requirements (ibid: 13).

To facilitate human rights implementation on a practical level, Shell also published a management primer for human rights in 1998 (Shell 1998a). This is a general introduction to the issue of business and human rights to "help Shell companies

identify and understand their role and responsibility in supporting human rights” (ibid: 5). It has particular focus on the UDHR, and includes the full text of the UDHR as well as links to the relevant human rights resources of the UN, ILO, OECD, as well as links to human rights organizations and other human rights resources. The primer states that the role of business in protecting human rights is based on the UDHR’s call on every individual and organ of society to do so (ibid: 15). It also identifies situations in which the operation of Shell companies might have human rights dimensions, such as security provision. The security issue, and especially the Nigerian experience, also led Shell to review its security provision. In 1998 group-wide Use of Force Guidelines were developed and adopted. These included requirements to seek assurance from state forces that the use of force will be consistent with human rights, proportional to the threat and will minimize damage and injury, and that state forces are held accountable for any excessive use of force. The guidelines further stipulate the ‘rules of engagement’ for calling in or contracting with state security forces. They also provide advice on acceptable courses of action and responses against those who represent a threat to the security or safety of personnel or company assets (Shell 1998c: 38; Shell 1999: 17; IBLF 2004:05:23).

Apart from their own efforts, Shell also supported a number of external initiatives. In 1999 Shell declared a ‘broad’ support of the aims of the ILO ‘Declaration on Fundamental Principles and Rights at Work’ (Shell 1999: 28). During 1999, the company also participated in developing the Global Sullivan Principles developed from the criteria governing investment in apartheid South Africa, and contributed to the review of the OECD Guidelines for Multinationals which they had supported since 1976. Further, Shell declared its support for the UN Global Compact initiative (Shell 2000: 25), and in 2000 declared support of the Voluntary Principles on Security and Human Rights, to which they had contributed to develop (Shell Website 2005.05.10; Voluntary Principles Website 2005.05.25). To give a credible impression of their progress, the recent Shell reports have emphasized transparent information on social performance, and cooperating with acknowledged organizations to regain public confidence:

“An important part of building confidence is the publication of reliable information that gives a fair picture of our performance. Without verification by respected organisations neither you nor we can be sure that real progress is being made in critical areas”. (Shell 2001: 4)

In Nigeria, the mechanisms for reporting human rights violations were strengthened in February 2000, when Shell introduced a ‘Whistleblowing Policy’ that makes it acceptable practice for staff and those with whom the company does business to alert the company in utmost confidentiality about actual or potential breaches of Shell’s Business Principles. According to Shell, those ‘blowing the whistle’ can do this without fear of victimisation or reprisal from the company or from the individual or individuals concerned. Since August 2001, the Whistleblowing Policy has been run by the Internal Audit and Ethics Committee (IAEC) which oversees the implementation of Shell’s Business Principles in Nigeria, and also is responsible for relations with industry, NGO’s and the Federal Government on these issues. Through this policy, Shell offers the promise of independent, unbiased investigation and the protection of identity for internal and external sources (Shell Nigeria Website 2005.05.24b).

According to Shell, communities in the Niger Delta are well aware of this policy, but notes that it has been more utilized in cases of fraud than human rights violations. Still, it is a valid process for SPDC to receive complaints of any kind. Shell also points out that Community Relations officers are constantly in touch with communities, and that part of their duties is to listen to and properly channel the grievances of communities to management. Further, SPDC regularly holds discussion forums (People’s Parliament) where issues such as human rights are discussed with communities. Shell says that the communities are also encouraged to speak to SPDC management through the External Affairs managers on any issue; an encouragement Shell claims is acted upon by the communities (Deehan 2005 [e-mail correspondence]).

To make the approach to human rights more systematic, Shell has also recently developed a Human Rights Assessment Tool (HRCA) with the aid of the Danish

Institute for Human Rights. The Tool has been tested in South Africa in 2001/2002 and in Oman in 2002/2003, and is based on a number of indicators drawn from over 80 major human rights treaties, including the UDHR. It includes six steps that cover 1, a country risk analysis, where every right in the UDHR is measured against the rights in that country; 2, human rights focal areas, identifying where the company should refrain from human rights abuses and remain vigilant for abuses by its contractors; 3, compliance assessment, where performance is measured against the HRCA; 4, identifying necessary follow-up action to address key issues; 5, stakeholder dialogue, where key stakeholders are invited to review findings and discuss the follow-up; and 6, reporting, where each company may report externally on its human rights performance. Shell claims that this tool is capable of detecting the most important human rights concerns in relation to each company's location and type of operation (Shell Website 2005.02.11).

Assessment

With the publication of Shell's first social report in 1998 the company had also started a trend of referring to human rights when commenting on their own behaviour. This would, according to the model, be indicative of a company that has reached a prescriptive status. Having faced severe reputational damage, it also seems that Shell through its 1998 report eagerly sought the potential 'lent trust' they could gain from NGOs to try to rebuild their image. As the model indicates, it is difficult to establish if Shell at this point believed in the validity of human rights, or if they had only instrumental or rhetorical support for these norms. However, Shell now met the criteria put forth in the Spiral Model determining if an actor has accepted the validity of human rights norms and used as a measure for establishing if a company has attained a proactive human rights strategy. *Firstly*, Shell now declared support for the UDHR, in addition to the OECD guidelines. They also declared support for the ILO guidelines, and subsequently supported new guidelines and initiatives, such as the Global Sullivan Principles, Global Compact and Voluntary Principles on Security and Human Rights, as they emerged. *Secondly*, the support for fundamental human rights had been institutionalized in the 1997 SGBP which was now mandatory, and

the UDHR was established as a benchmark against which to measure performance in the human rights management primer and the HRCA. *Thirdly*, the reply cards accompanying the Shell reports and the ‘Tell Shell Forum’ on their website introduced an opportunity for stakeholders to complain about human rights violations. Furthermore, the ‘Whistleblowing Policy’ and community relations in trouble areas, like the Niger Delta, facilitates the ability of the local community to do the same.

Finally, there is little evidence suggesting that the discursive practices of Shell was now changing when addressing different audiences, or that criticism is viewed as interference in their internal affairs. As the model predicts, corporate management had now, together with key stakeholders, become the dominant driving force moving the process forward and developing new organizational forms to integrate the human rights issue. The dialogue with human rights organizations such as Amnesty International continued, and the involvement with the Danish Institute of Human Rights to develop the HRCA, gives further indication that Shell is interested in including a wide range of expertise to best integrate human rights in their practices. From the evidence presented here, it is thus safe to assume that Shell has reached a prescriptive status and a proactive human rights policy.

4.3.5 Towards Rule Consistent Behaviour?

With the 1999 report, Shell had introduced the reporting of general statistics – though not on a country basis – on the use of security personnel, armed and unarmed, and number of major security incidents in relation to wars or community disturbances (Shell 1999: 17). As some commentators have noted, such methods can verify certain facts and figures, but they cannot normally make judgements on performance (Tangen, Rudsar & Bergesen 2000: 191-192; Tangen 2003: 10-11). Questions about what to measure, and how, remained. Identifying a set of KPIs remained a challenge since there were no internationally recognized standards. The external affairs and

social accountability teams continued their discussions of this issue with important constituency groups, including NGOs and government bodies (Paine 1999b: 2).

Despite the massive transformation process within Shell, there has also been a recognised strategic gap between Shell's policy and practice on social responsibility. To deal with this, a Social Performance Management Unit (SPMU) was established at Shell's headquarters in 2002, as part of the Shell International Sustainable Development Department. This Department is seeking to understand the ways in which the goals of social responsibility can most effectively be integrated into strategic and operational thinking, through generating learning from case studies, and developing various tools on how to implement manage and monitor social performance. (Banfield & Champain 2004: 7-8).

Nigeria has continued to face Shell with human rights issues and other challenges. Though the country was moving towards democracy in 1999, MOSOP continued to campaign for self-determination of the Ogonis, and had given SPDC and ultimatum to "clean up or clear out by 2000" (Shell 1999: 29). Shell itself has pointed out that "Social investment is not a substitute for good business practice" (Shell 2000: 25), but the company has through its subsequent strategy increasingly focused on social spending, especially community development in Nigeria (Shell 2001: 22; Shell 2002: 39-41; Shell 2003: 36-39; Shell 2004: 18).

Shell representatives also claim that the company played an active role in increasing the share of oil revenues distributed to local communities in the Niger Delta through the so-called Derivation Fund. Shell says that while it has not pressured the Nigerian government to increase the contributions to the fund, "their role had been pivotal in pointing out the positive effects this could have" (Tangen 2003: 14). Nonetheless, levels of crime and violence in the Niger Delta have remained high through the first years of this millennium, and armed gangs have continued targeting Shell facilities (Shell 2004: 5). A report by the Norwegian Refugee Council (2005: 9) notes that violence, killings and displacement of people remained high during 2004 and that paradoxically, the transfer of money back to local communities has become a reason

for violent clashes, as community development programs funded by the oil companies have made political positions increasingly attractive.

The incidents that took place in Nigeria in the 1990s, has also later had legal repercussions for Shell. Recently, the 1789 United States federal Alien Tort Claims Act (ATCA) has been used to file lawsuits against corporations, by those claiming to be victims of corporate human rights and environmental abuses overseas, though the jurisdiction and kinds of human rights breaches potentially covered by ATCA is very unclear (Kinley & Joseph 2002: 9; Christian Aid 2004: 15; ICHRP 2002: 104). A lawsuit filed under the ATCA on behalf of the Wiwa family and other activists alleges that the 1995 executions were conducted with “the knowledge, consent, and/or support” of Shell Oil (Progressive 1998.06.25). Shell has responded by asserting that it does not have legal responsibility over its Nigerian operations. The corporation claims it is a mere holding company, a conglomerate of independent subsidiaries and diversified investments.

Shell also must answer to charges that it participated in General Sani Abacha’s human rights abuses. Shell has at one point admitted asking for help and buying handguns for the police guarding its facilities, but has denied paying the military (Progressive 1998.06.25). As the case proceeded, Shell has however changed their position on this matter:

“We are disappointed that this case will proceed, since it was a former Nigerian government, and not Shell, that committed the acts alleged in this claim...But we are very confident that the evidence will show that Shell is simply not responsible for these tragic events...[W]e have never provided any arms for soldiers in Nigeria nor would we, and we have no connection with any military operations in Ogoni land.” (Shell spokesperson Mike McGarry, quoted in Socialfunds 2002.03.08)

Further, originally spurring discontent in the area, Shell still faces criticism over oil spills in the Niger Delta. Shell has generally denied causing environmental devastation in Ogoniland, and has also on this issue countered criticism by pointing to the contributions it makes to community projects, and by blaming the oil spills on sabotage and illegal tampering with SPDC facilities by Ogoni activists (Progressive

1998.06.25; Shell Nigeria Website 2005.05.24a). However, recent investigations and reports, for instance one made by Christian Aid, uncovers that oil spills continue to be a widespread problem, and that Shell has not taken adequate measures to prevent these from occurring and cleaning them up. It also deems Shell's community programs in the Niger Delta as largely dysfunctional (Christian Aid 2004: 22-33).

Shell has engaged in a reconciliation process with the MOSOP and Ogoni, and has – despite its denial of causing environmental degradation – proclaimed its intent to clean up oil spills by building a consensus among the company's major stakeholders for this purpose. However, Shell claims that the cleaning up is stalled in certain areas due to continued refusal of some communities to allow the company access (Shell Nigeria Website 2005.05.24a). Recently, human rights organizations have increasingly started to use the proposed UN Norms for Business as a benchmark for assessing the human rights performance of TNCs. An Amnesty International report published in 2004 concludes that oil spills from Shell installations are in breach with articles stating that “TNCs...are responsible for the environmental and human health impact of their activities”, and that they should “make reparations for damage done through their failure to meet the standards spelled out in the UN norms” (Amnesty International 2004a; UN Norms 2003: Articles 14 and 18).

Shell on its part has through the International Chamber of Commerce (ICC) led a lobbying campaign against the proposed UN Norms achieving legal status comprising implementation mechanisms. Robin Aram, Vice-President of External Relations and Policy Development at Shell, has stated that Shell does not find the norms helpful, because Shell has already adopted high human rights standards, which are now in the implementation phase, and that “Shell supports the views of ICC and other national and international industry organizations that the draft Norms initiative is misguided” (Corporate Europe Observatory 2004). Despite this reluctance towards the general codification and regulation of TNC human rights responsibilities, Shell continues to develop its own strategy to better handle social issues. As present CMD chairman Jeroen van der Veer states in the latest Shell (2004: 3) report:

“Social performance also involves understanding and better managing the wide-ranging impacts we have on the communities where we operate. I am pleased we are taking a more systematic approach across Shell, for example by requiring stakeholder engagement plans for all our major sites.”

Assessment

As the model proposes, the criterion determining if actors believe in what they say or only have instrumental or rhetorical support for human rights, is if their words and deeds ultimately match. Though there are apparently some inconsistencies in Shell's public statements, Shell has developed a rather comprehensive human rights approach with management systems to provide implementation and compliance. For Shell, one of the problems has been verifying the actual results of their approach, which is in part a consequence of the lack of internationally recognized standards. However, this should not overshadow the fact that Shell has made considerable effort in the human rights area. Further, it seems that some of the presumably good intentions of Shell have had unintentional adverse effects. As the company has devoted money to community development projects and approached the Ogoni people in an attempt at reconciliation, this has backfired on Shell as the contest to reap the benefits of these projects have increased tensions in the Niger Delta.

Though Shell has not acted on the demands for it to clear out of the Niger Delta, it is unlikely that this would have had any significant impact on the level of violence in the areas Shell operates. As long as 95% of the Nigerian federal government revenue comes from oil production, this activity is bound to proceed with or without the presence of Shell. One would assume that the transition to democratic rule in 1999 would have made the Nigerian context easier to navigate for Shell, but it seems that as oil production continues to be a major cause of conflict, Shell continues to be in the line of fire. Moreover, as long as Shell is making an effort to take human rights into consideration, human rights conditions in the Niger Delta might even deteriorate if Shell and other oil-companies were to leave. As the country is so dependent on oil revenues, violence and killings by the Nigerian army and police to keep production going when it has been disturbed by local conflicts or protests, has continued under

the democratic regime (Human Rights Watch 2003; IRIN Website 2005.06.10). Having a prominent company such as Shell in the area may have contributed to keep the spotlight on the Nigerian situation in general.

According to the proposed model, sustainable change in human rights conditions will only be achieved when management is continuously pushed to live up to its claims and when the pressure “from below” and “from above” continues. In the case of Shell, it looks like the company as a consequence of earlier controversies is still left with little leeway concerning its human rights. At this point, it seems that through the continued pressure from local communities and the INGOs, Shell has no choice but to continue their efforts to improve their human rights practice, and that this is leading to an institutionalization of human rights in Shell’s strategy and organization, and on its way to becoming a habitual practice enforced by company rules.

4.4 Concluding Analysis of Shell’s Transformation

The main question of analysis which I have sought to answer throughout this thesis is *why do some transnational corporations incorporate human rights into their business strategy?* The point of departure has been that in an increasingly globalized society where TNCs have gained considerable influence and few, if any, duties regarding human rights, one has to look to the expectations of society to explain the measures taken by some TNCs. I have argued that the social constructivist Spiral Model might provide a theoretical foundation capable of bringing a general holistic understanding to this subject. Though there was a need to include an explanation for why the focus of discontent might shift to a TNC operating in a country where human rights abuses occur and reconsidering the type of dominant actors likely to be dominant in the different phases, the main positions and hypotheses Spiral Model has remained unaltered through its translation to the realm of TNCs.

Indicated by the evidence presented and analysis made above, Shell’s human rights strategy from the beginning of the 1990s until around 1995 was informed by a view

of human rights as irrelevant for the company, and thus in line with a reactive strategy. From 1995 to 1997, Shell's approach developed into a more cautious strategy. Shell had recognized that human rights was an issue they could not neglect. The company had started to adapt rhetorically and had initiated a process which would eventually lead to more substantive changes. From 1998 onwards, human rights became an important issue for Shell, and new management systems were developed to incorporate human rights considerations into its operations. Thus, Shell had moved from a reactive to a proactive human rights strategy.

Looking at the conditions under which the socialization of Shell commenced, it is safe to say that the company's uncertainty about the anticipated long-term financial impact, following the brief dip in share prices around 1995, left Shell in a position where the rewards for declaring support for the UDHR at first might have seemed greater than the costs of complying with the norm of TNC human rights responsibility. According to social constructivist theory, this would be conducive to make behavioural adaptations a preferred strategy of the targeted agent (see 2.2.4). This is also indicated by Shell's change in rhetoric following the execution of Saro-Wiwa in 1995, and throughout the 'tactical concessions' phase.

Being one of the first TNCs to be targeted and pressured to take direct responsibility for human rights issues in the broad sense, Shell was manoeuvring in a novel and uncertain environment. Though it had developed a social policy with the objective to conduct its operations in a 'socially responsible way', management saw human rights as an issue concerning states and international organizations. Thus, apart from this notion the company did not have a defined and clear approach to this issue. Shell's social policy was not 'anti human rights' – it just did not capture human rights issues in a meaningful way. Thus, the company could not be seen to have ingrained fundamental beliefs that were inconsistent with the new norm. What also became evident was that Shell's stakeholder consultation showed that people both external and internal to the company favoured a more proactive human rights strategy. Though there was certainly vocal opposition against becoming entangled in human

rights, there was also a deep sense of discomfort among the company's own people, making internal opposition towards human rights considerations lower. These circumstances would, according to the theoretical framework, make the persuading of Shell to change behaviour more likely.

Furthermore, after the initial round of NGO activism through shaming and aiming to damage company reputation, the fact that e.g. Amnesty International, Pax Christi and Human Rights Watch approached Shell outside the public sphere is important to make a note of. This contributed to de-politicize the socialization process and place it in a setting where there could be a dialogue allowing both the NGOs and Shell to present their arguments in a more open and free manner. As noted, the fact that a former Shell executive was heading the AIUK Business Group could also contribute to a dialogue based on mutual understanding. These circumstances would also contribute to make persuasion a more dominant mechanism during the 'tactical concessions' phase.

Finally, if we were to consider the possibility of role playing as a mechanism in the case of Shell, this must be seen in relation to the World Time context in which the socialization of Shell has taken place. As we have seen, the TNC human rights responsibility norm for companies was, at most, immature and was not accepted by the wider TNC community at the time Shell was approached by the human rights NGOs. Thus, at the early phases of the Spiral Model there was not much to indicate that Shell would comply with this new norm as "the socially accepted thing to do". However, as the Shell's dialogue with human rights NGOs has been both long and sustained and intensive and extensive, it is possible that this contact has in it self has had a socializing effect. In the case of Shell it seems like the dominant mechanism following the initial behavioural adaptation has been that of argumentation and normative suasion. Still, socialization through role playing might today be gaining prevalence as an explanation for TNC human rights strategy as it is more group-oriented, an issue discussed further below.

Turning to the issue of internalization, the point at which Shell may be said to have made a definite turn from a ‘logic of consequences’ to a ‘logic of appropriateness’ looks to be around 1998. At this point, identity, rules and norms were increasingly shaping the behaviour of the company, not the pure utility-maximizing, exogenously given and hierarchically ordered preferences informing Shell at the beginning of the process. In line with the argument above, Shell had not learned its new role irrespective of beliefs as the “socially accepted thing to do” (Type I internalization). Rather, through mechanisms of persuasion and argument, it seems that Shell had now accepted their responsibility to promote and defend human rights as “the right thing to do” (Type II socialization).

When assessing the first year of progress made since the first social report was published 1998, former CMD chairman Moody-Stuart admits the pace of meeting Shell’s new objectives had been slower than intended in some areas (Shell 1999: 3). As noted, Shell had prior to 1990 been considered a ‘dinosaur’ in the industry when it came to implementing change. This may be explained by taking into consideration the point that Shell is one of the transnationals that has developed the most prominent geocentric features. The consensual and including decision-making style of the company can be evidenced in the massive stakeholder engagement Shell initiated in 1996 and its continuing dialogue with the local communities where the company operates. Further, their inclination towards developing evaluation and control mechanisms which are both universal and local is evidenced in the ‘Business Principles Letter’ introduced in 1997, in which country chairmen relate how issues in their countries relate to the SGBP and how they are being applied locally (Shell 1999: 4), and in the HRCA which has been tested in several countries and is designed to capture the specific human rights concerns of different countries. As expected from a geocentric company, Shell’s incorporation of the new human rights issue has been time and resource consuming. On the other hand it seems to be both thorough and inclusive. A pioneer TNC in its dealings with NGOs and the human rights issue, it seems the ‘dinosaur’ has become a ‘guinea pig’ when it comes to developing organizational forms that might effectively incorporate human rights.

A final assessment of Shell's human rights strategy entails changing focus to the level of states and international institutions to look for possible explanations. As I have shown, the UN has been a major provider of norms and compliance mechanisms as benchmarks for NGOs when they have developed their TNC approach and guidelines. However, the UN system has not yet imposed direct legal responsibility on TNCs, though a movement in this direction is indicated by the proposed UN Norms. In the case of Shell, the UN can not be seen as having a direct influence on company strategy, but has been important to provide the normative basis on which strategy change has taken place.

As for individual states, governments have not imposed any sanctions against Shell directly. Moreover, when the EU proposed an oil embargo on Nigeria in November 1995, the British and Dutch home governments of Shell vetoed the proposals, being worried about their impact on Shell (Frynas 2003: 279). In 1997, a Shell contract with the Chinese government was cancelled when the Dutch government, of the fiercest critics of civil liberties policy in China, proclaimed intentions to sponsor a UN Human Rights Commission resolution on the issue. However, in 1998, the Dutch government reversed its position, and Shell was awarded the biggest investment ever granted to a foreign group (*Le Monde diplomatique* 2000.12.08). Thus, not only are TNCs shielded from human rights responsibility by international law, it also seems that when the financial interest of a company is at stake, the home governments of the company are reluctant to impose trade and investment related sanctions on the implicated host country. In other words, though home country human rights climate and the ideological links between a company and its country of origin may explain part of a TNC's inclination regarding social issues, the ideology and climate of home country policy is evidently not always consistent when the interests of cornerstone businesses are at stake.

In conclusion, the evidence from the case of Shell suggests that the pivotal role in influencing the human rights strategy of Shell has been performed by a transnational advocacy network consisting of human rights INGOs and domestic movements. The

transnational network has been pivotal in mobilizing public action against Shell, and by expanding the network to incorporate new groups of stakeholders. As the process has unfolded, the role of management in moving the process to the next level has gradually increased. Though Shell continues to develop the necessary management tools to achieve their human rights goals, the change in Shell's approach to the human rights issue and its external environment is still significant. As some commentators have noted:

“Indeed it is arguable that the involvement in a broad spectrum of interested parties and stakeholders has been the main result of Shell’s efforts over the last few years. The process itself can be seen as a major output.” (Tangen, Rudsar & Bergesen 2000: 194-195)

By looking at how the case of Shell relates to the main propositions of the operational framework, it can be summarized as follows:

- The development of a TNC human rights responsibility norm from the beginning of the 90s, and Shell's operation the SPDC joint venture with the Nigerian government, made the local community and international human rights view Shell as an accomplice to human rights violations related to oil production in the area and started targeting the company directly.
- As the norm of TNC responsibility became increasingly established, Shell's exposure to environments where human rights abuses take place and the company's monolithic, high-profile identity left the company particularly vulnerable to criticism from the human rights community.
- Having its base in two countries where human rights organizations traditionally have a strong standing, the company was surrounded by influential NGOs who were close to the company both geographically and culturally. The existence of a distinct British corporate 'citizenship culture' may have further shaped the company's approach to 'soft' issues and influenced Shell's ability to accommodate external influence regarding human rights.

- As Shell is particularly vulnerable to criticism, and became increasingly so because of Brent Spar, the denial phase indicating a reactive strategy remained brief. The desire to restore the company's flawed reputation is a probable explanation for the initial tactical concessions and the relatively swift support of the UDHR, indicating Shell's cautious strategy.
- If Shell's early response was marked by rhetorical adaptation, the evidence suggests that a close dialogue with NGOs and further concessions have led the company to a stage where it acknowledges the validity of human rights. In a geocentric fashion, Shell has developed management systems that aim at providing integration and implementation of human rights throughout the group that is sensitive to local conditions. Thus the company is now pursuing a proactive strategy.

The 'fit' – the degree to which the empirical pattern of events in the matches the sequence of the theoretically predicted pattern – between the case of Shell and the Spiral Model and framework can then be assessed. As the evidence presented in this chapter shows, the process through which Shell developed its human rights strategy shows a remarkable correspondence with the propositions and hypotheses of the Spiral Model. As Shell went through the phases from 'denial' to 'prescriptive status', the dominant actors and mode of interaction seemingly changed as proposed in the original model. The dominant actors during the first two phases were the transnational advocacy networks of the original model, while the mode of interaction remained one of instrumental rationality. The 'reformist stakeholders' proposed in the corporate model became more influential in the third phase, and the interaction mode changed from instrumental rationality via rhetorical action to a more argumentative behaviour. Further, as I proposed through the operationalization the last two phases saw corporate management and other 'key stakeholders' moving the process forward. In the case of Shell, these key stakeholders included as diverse groups as employees, consumers, investors and human rights experts who influenced the company on human rights issues, and worked with the company to implement them. At this point,

the evidence suggests that interaction with norm promoters became based on argument, and it seems that a process of institutionalization and habitualization of human rights was under way.

The degree of fit between the analytical framework and Spiral Model, and the pattern of the Shell-case gives an indication that the internal validity of the analysis is strong. Moreover, the adaptation of the model to the realm of TNCs, and the explanation building through its incorporation into a proposed analytical framework explaining the human rights strategy of TNCs, seems to provide a good tool to illuminate the essential factors leading to changes in Shell's human rights approach. This tool should also be useful when considering the human rights strategy of other TNCs.

4.4.1 The Future of TNC Human Rights Socialization

As the applicability of the Spiral Model and the framework developed in this thesis to explain the human rights strategy of TNCs has been ascertained, and these explanations have been assessed, the implications of this analysis in a wider perspective should also be considered. Shell can be seen as a pioneer as it was among the first companies to be targeted by the human rights community and to accept responsibility, together with e.g. British Petroleum. At the end of the 1990s, other companies such as Statoil and Norsk Hydro included the defence of human rights in their corporate policies, but acceptance of human rights responsibility remained the exception (Chandler 2000: 13). The human rights strategy of these companies has contributed to strengthen international and TNC community acceptance of human rights as a valid norm for companies, and to move the norm life cycle of TNC human rights responsibility forward.

As more companies have joined these ranks, this has not initially been the outcome of corporate leadership or recognition of principle, but a "response to critical consumer pressure, damage to reputation through specific disasters, and, belatedly a perception of self-interest in responding positively to society's expectations" (Chandler 2000: 6). As Sullivan (2003: 316) asserts, it is difficult to draw firm conclusions about the

direction of human rights performance of companies (i.e. to assess whether human rights impacts associated with company operations are increasing or decreasing in frequency or severity). However, some companies are implementing management systems and processes that are in line with the recommendations made by, for instance, Amnesty International, and that refer explicitly to the UDHR. These companies can be classified according to one or more of the following: 1, the company has had at least one *major issue* with human rights; the company has *exposure* to particularly sensitive countries; 2, they are part of the *oil, gas or mining* industries (industries particularly criticized for their role in or proximity to human rights violations); 3, the company is hoping to derive a *competitive advantage* from having a human rights policy (i.e. companies comprising ethical investment businesses); 4, there is a strong human rights climate in the company's home country (ibid).

It seems that the TNC approach to human rights has started as individual efforts to handle crises and a changing context. As noted, the number of transnationals with policies referring to human rights and the UDHR has been steadily growing since the beginning of the 21st century. This group now include a small but significant number of the TNC community and some of the largest and most influential companies in the world. They are developing their own management systems, and are entering dialogues and partnerships. Thus, it seems that the norm of human rights responsibility for TNCs might soon reach a 'tipping point'. However, without binding regulation or at least a more stable collaborative approach, this might take time, even though the human rights framework for companies is becoming increasingly clear and uniform. The reason for this is that, as Zadek (2001: 220) argues, leadership practices that are not institutionalized beyond the individual corporation are unlikely to lead to a sufficient promotion and protection of social goods. Practices that are codified and implemented across the wider business community – especially multi-stakeholder alliances comprising public bodies, NGOs and trade unions – will on the other hand have a far greater chance to bring

significant improvements in the social (and environmental) performance of companies and to influence other actors.

Civil alliances and partnerships which are emerging today will over time seek to codify negotiated agreements into more formalized governance frameworks. This is because. Collective approaches will reduce transaction and other costs and increase the potential for replication by others. Those frameworks that fail to effectively codify agreements will eventually fail and collapse, because public bodies, NGOs and leadership corporations will withdraw their support, and with that the legitimacy operational competencies of the framework (Zadek 2001: 220). For TNCs, the rationale behind finding a unified approach might be more straight-forward than in the case of states. The corporations that have invested time and money in observing human rights and making themselves accountable, at the same time fear being at a competitive disadvantage in relation to corporations that not undertake such responsibilities and may also potentially lose business opportunities in countries with poor human rights records. As a result, they have tried to avoid being at a cost disadvantage when adopting these practices, often by pressuring ‘follower’ competitors to imitate their approaches (Muchlinski 2001: 35-36; Zadek 2001: 33). Further, if the TNC community still wants to avoid the establishment of mandatory regulation, it has to prove that their voluntary self-regulation initiatives are effective and credible.

In the light of socialization theory, as the life cycle of TNC human rights responsibility is reaching a tipping point, the creation of ‘in-groups’ of TNC norm leaders and ‘out-groups’ of TNC norm breakers is more likely (see 2.2.3). More companies will look to these norm leaders for demonstration and imitate their behaviour. Thus, more companies will be socialized by accepting human rights responsibility as “the socially accepted thing to do” (Type I socialization). TNC norm leaders will on their part sanction norm breakers through disapproval, shaming or even material reprimands. An indication that this has started to happen is that Shell and other companies have developed policies that prevent them from hiring

subcontractors or engaging in ventures with TNC that have practices which disagree with their own human rights principles. This gives a powerful signal to companies who might be dependent on selling their services or cooperating with the more proactive TNCs.

As I in the previous chapters of this thesis have considered the potentially extensive negative impact the practices of TNCs may have on human rights conditions, this concluding discussion gives a hint about the potentially extensive positive impacts the proactive human rights strategy of TNCs can have. Not only will TNCs which operate in numerous countries with poor human rights records be expected to implement this through the entire group of companies, influencing the governments in the countries they operate and with whom they cooperate – following social constructivist logic they will also have considerable influence on the wider business community. As Osterberg and Ajami (1971: 463-464) argue:

“the multinational corporation should be recognized as a major architect and disseminator of world culture. In this role, it serves as a primary carrier of social change in contemporary world society, and because of this, the multinational must be conceived of and treated as one of the prevailing world political actors today.”

Up till now, the actors who have best understood the implications of this have been human rights organizations. They have through their efforts raised the issue of TNCs and human rights in the public debate and made a number of TNCs re-think their approach. This has been based on belief in the values laid down in the Universal Declaration of Human Rights which grant the same universal rights to all human beings, but also impose the duty to protect these rights on all individuals and organs of society. At this moment, TNC compliance with this norm has been driven forward by NGO initiatives and a gradual acceptance of human rights by TNCs through the development of voluntary principles and self-regulation. However, this voluntary effort has not yet resulted in a coherent approach to the human rights issue by the TNC community.

In the future, if states are to uphold *their* responsibility for the protection and promotion of human rights, this might require a new international approach, especially if the voluntary initiatives that are being developed today fail to bring substantial improvements in the human rights record of the TNC community. As Article 28 of the UDHR (1948) states:

“Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

The proposed UN Norms might be a step towards creating an international order that incorporates and codifies the human rights responsibilities of TNCs, but so far the international community has not displayed the necessary will to achieve this.

5. Conclusions

The departure point of this thesis has been the desire to investigate why TNCs incorporate human rights in their business strategy. To explain this, the ambition has been to identify the context in which TNC changes in human rights strategy take place, to identify the dominant actors who influence this process, and to identify the mechanisms of the process itself. As social constructivist theories capture these elements through their account of norms influence, especially in the context of human rights norms, I have argued that a social constructivist approach to the TNC/human rights issue provides the necessary tools to build a comprehensive and valid explanation.

Three ideal type strategies TNCs may have when addressing human rights – from reactive via cautious to proactive – have been identified, indicating a company's progressive acceptance of the validity of human rights. To answer why companies pursue different strategies and how these strategies might change, I have operationalized these strategies through Risse & Sikkink's (1999) 'Spiral Model', which is a causal model explaining the variation in the extent to which an agent moves along the path toward improvement of human rights conditions. This has provided a framework with propositions and indicators to make possible the identification of the aforementioned context, actors and interaction modes typical of the different strategies.

As this model is originally applied to states, I have further developed the model to capture TNC specific conditions and traits, an adaptation which has been both theoretically and pragmatically founded. The basic argument has been that though TNCs cannot be equated with states, they display some of the same traits as states and are faced with some of the same dilemmas as states when it comes to human rights. Further, social constructivist theories are inherently eclectic and pragmatic in their

scope and are applied to organizations and individual policy makers as well as states. On a practical level, the translation of the Spiral Model has required making some adjustments and introducing some preconditions. On the contextual level, it has been necessary to establish the growth of a norm which ascribes responsibility for human rights directly to TNCs, as international human rights has not yet captured TNCs. Other contextual factors identified are the differing human rights climates concerning TNCs and social issues in the TNC's country of origin and the countries in which they operate. This also includes the strength of human rights NGOs in these countries. On a company specific level, I have argued that the structure and management of the company needs to be taken into account. This means identifying the TNCs ownership structure in different countries, looking at how exposed they are to environments where human rights abuses takes place, and how profiled and recognizable a TNC is globally. Finally, I have argued that the management structure of a company will condition how values spread throughout a TNC's group of companies.

My analysis of Shell showed that as the norm of TNC human rights responsibility gained strength in the mid-1990s, Shell was seen as an accomplice to, and responsible for human rights violations in the Niger Delta through the company's joint venture with the Nigerian government. When the Ogoni minority started targeting Shell directly 'from below' this led to the mobilization of international human rights organizations and the creation of a transnational advocacy network pressuring 'from above'. As Shell uses its brand extensively throughout all parts its operations to add value and credibility, this makes the company especially vulnerable to reputational damage. Moreover, Shell is based in countries with a strong human rights climate and strong human rights NGOs. This made the targeting of Shell most effective. As Shell already was trying to convey an image of operating in a 'socially responsible way' and Shell's practices in the first half of the 90s did not match the new expectations which had emerged from society at this time, Shell was now in need to regain the confidence of employees, consumers and society in general.

My analysis shows that NGOs have been crucial in the early phases of this process through campaigns and pressure and eventually dialogue. As human rights responsibility has been a norm increasingly accepted by the company, human rights have become a part of Shell's identity and new organizational forms and management systems have been developed. As Shell has pursued a proactive human rights strategy, management and a wide range of stakeholders are now the driving forces moving the process ahead. In line with its universal orientation, Shell is developing human rights control mechanisms that not only are generally applicable, but also pay attention to the special conditions of different countries. Through this process, actors ranging from international human rights organizations to local communities are involved.

The match between the case of Shell and the predictions of the Spiral Model has granted the internal validity of the analysis considerable strength. Realizing the potential external validity will first be possible if the human rights strategies of other TNCs are analyzed in a similar manner, paying close attention to contextual factors and providing detailed accounts of the actors and interaction modes which influence these strategies. As I have implicated, as more TNCs pursue human rights strategies, the fashion in which socialization takes place and the socializing agents are likely to change. There are already strong indications that TNC norm leaders are beginning to influence 'pariah' TNCs to change their human rights strategy, and that more companies will in the future accept human rights responsibility as the "socially accepted thing to do". Thus, not only will future explanations of the human rights strategies of companies require research on individual companies, they will also require research on how strategies change as a result of group dynamics within the TNC community.

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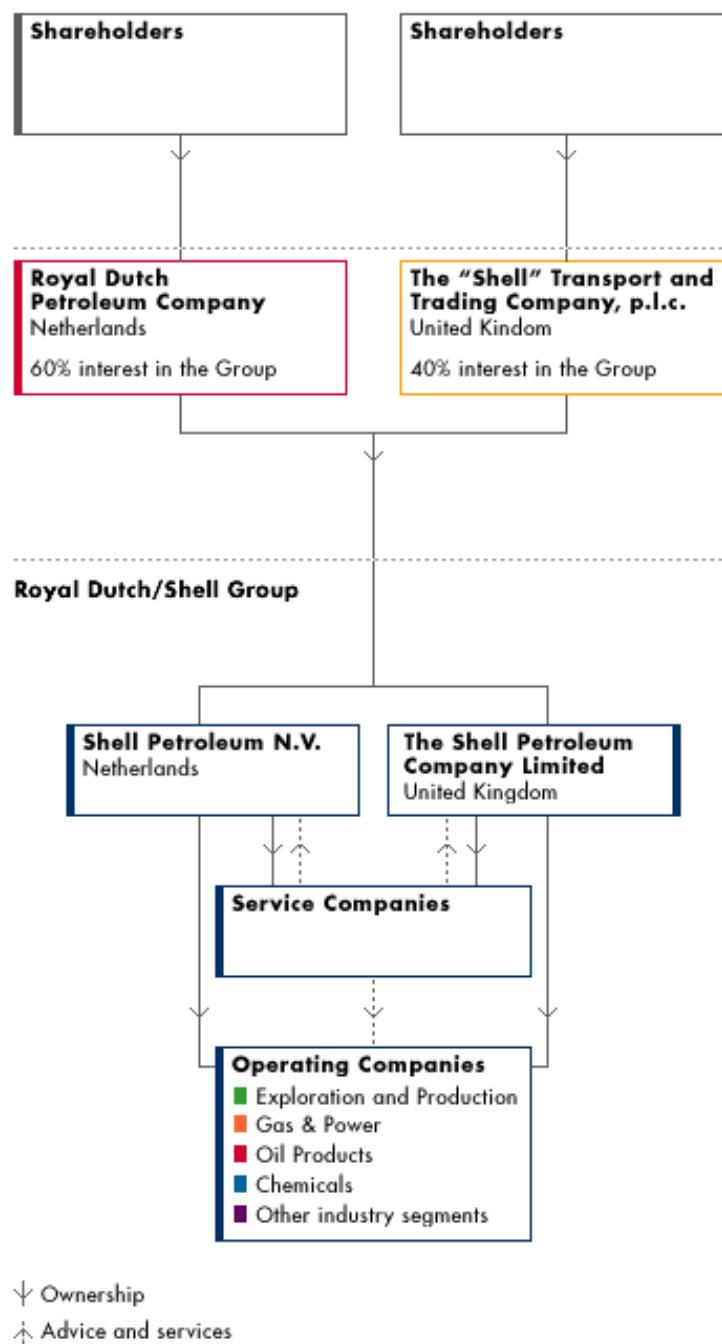
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Appendices

Appendix 1: Structure of Shell



Shareholders

Shareholders hold shares in either Royal Dutch Petroleum Company (Royal Dutch) or in The "Shell" Transport and Trading Company, p.l.c. (Shell Transport). Shares of one or both companies are

listed and traded on stock exchanges in eight European countries (Austria, Belgium, France, Germany, Luxembourg, the Netherlands, Switzerland and the UK) and in the USA.

Parent Companies

As Parent Companies, Royal Dutch and Shell Transport do not directly engage in operational activities. They are public companies based in the Netherlands and in the UK respectively. The Parent Companies own the shares in the Group Holding Companies but are not part of the Royal Dutch/Shell Group of Companies. They appoint Directors to the Boards of the Group Holding Companies, from which they receive income in the form of dividends. The Parent Companies receive most of their income in this way.

Royal Dutch/Shell Group of Companies

The numerous companies in which Royal Dutch and Shell Transport own investments are collectively referred to as the Royal Dutch/Shell Group of Companies.

Group Holding Companies

Shell Petroleum N.V. and The Shell Petroleum Company Limited between them hold, directly or indirectly, all Group interests in the Service Companies and the Operating Companies.

Service Companies

The main business of the Service Companies is to provide advice and services to other Shell companies.

Operating Companies

The management of each Operating Company is responsible for the performance and long-term viability of its own operations, but can draw on the experience of the Service Companies and, through them, of other Operating Companies.

Source: Shell Website [online] http://www.shell.com/home/Framework?siteId=royal-en&FC2=/royal-en/html/iwgen/leftnavs/zzz_lhn2_3_0.html&FC3=/royal-en/html/iwgen/who_we_are/structure_of_shell/structure_of_shell.html#0 (last accessed 21 May 2005).

Appendix 2: Correspondence with Clare Deehan of Shell

From: "Deehan, Clare E SI-PXXA" <Clare.Deehan@shell.com>

Subject: RE: TS : Human Rights Complaints Mechanism : Contact us form submission

Date: Fri, May 20, 2005 15:26

To: kholst@student.sv.uio.no

Dear Mr Holst,

Apart from the Tell Shell Nigeria, there a number of ways and avenues through which local communities can report violations to SPDC.

There is a whistle blowing process, driven by a policy and the communities are well aware of this. I must add though, that this has served mostly in cases of fraud more than human rights violations. But it is still a valid process for SPDC to receive complaints of any kind. Information on this could be found on Shell Nigeria website (www.shellnigeria.com).

Also, SPDC's Community Relations officers are constantly in touch with communities. Part of their duties is to listen to and properly channel the grievances of communities to Management. Regularly, SPDC holds discussion forum - called People's Parliament - where issues of this nature are discussed with communities.

Communities are also encouraged to write to or speak to SPDC Management through the External Affairs managers on any issue. And they do.

I hope this helps.

Your respectfully,
Tell Shell

-----Original Message-----

From: Kristian Holst [mailto:kholst@student.sv.uio.no]

Sent: 16 May 2005 12:19

To: TellShell SI-PXXC

Subject: TS : Human Rights Complaints Mechanism : Contact us form submission

Message recieved from Tell Shell contact form

16/05/2005: 12:18

Kristian Holst

kholst@student.sv.uio.no

Subject: Human Rights Complaints Mechanism

Analyzing the human rights strategies of TNCs in general and Shell specifically, I need some information on one specific issue:

- 1: Apart from the 'Tell Shell' reply cards provided by the Shell reports and the 'Tell Shell Forum' on your website, does Shell have any institutionalized mechanisms for stakeholders - for instance local communities in the Niger Delta - to complain about human rights violations perceived to have a connection with Shell operations? If so, what is the nature of these mechanisms?
- 2: If not, which other options remain for stakeholders (local communities in particular) to make such complaints?

Thanks a lot for your assistance,
Kristian Holst, student of Political Science, the University of Oslo, Norway.
